

INCOME TAX ACT
(CHAPTER 134, SECTION 43A)

INCOME TAX (INCOME FROM SYNDICATED OFFSHORE
CREDIT AND UNDERWRITING FACILITIES) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

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[14th February 1986]

Citation

1. These Regulations may be cited as the Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) Regulations and shall have effect for the year of assessment 1984 and subsequent years of assessment.

Definitions

2. In these Regulations —

“approved securities company” means a company approved under section 43A(1)(c) of the Act;

“corresponding Regulations” means the Income Tax (Exemption of Income from Syndicated Offshore Facilities) Regulations 2003 (G.N. No. S 183/2003);

[S 236/2009 wef 17/01/2008]

“financial institution” means a bank licensed under the Banking Act (Cap. 19) or a merchant bank approved by the Monetary Authority of Singapore;

“FRS 39” has the same meaning as in section 34A of the Act;

[S 236/2009 wef 17/01/2008]

“impairment loss” means an impairment loss recognised under FRS 39;

[S 236/2009 wef 17/01/2008]

“specified person”, in relation to any syndicated offshore credit facility —

- (a) means a non-resident person (excluding his permanent establishment in Singapore) or a permanent establishment outside Singapore of a person resident in Singapore in respect of any business carried on outside Singapore through that permanent establishment; and
- (b) where the agreement for the credit facility is made on or after 1st April 1998, includes a person resident in Singapore (but excluding his permanent establishment outside Singapore) and a permanent establishment in Singapore;

“syndicated guarantee facility” means any syndicated facility whereby any guarantee or letter of credit is made available to any financial institution or any approved securities company where —

- (a) the facility is in currencies other than Singapore dollars;
- (b) the guarantee or letter of credit was issued in favour of an Asian Currency Unit of a financial institution or an approved securities company, as the case may be, for the purpose of providing or participating in a loan in currencies other than Singapore dollars made to a non-resident person (but excluding its permanent establishment in Singapore) and the loan is to be used outside Singapore; and
- (c) no interest in respect of the loan referred to in sub-paragraph (b) is borne, directly or indirectly, by any person resident in Singapore (except in respect of any business carried on outside Singapore by a person

resident in Singapore through a permanent establishment outside Singapore) or by any permanent establishment in Singapore;

“syndicated offshore credit facility” means —

- (a) any syndicated loan or advance or any facility whereby any fund, guarantee or letter of credit is made available where —
- (i) in the case of an agreement for a facility made before 14th August 1998, the facility is in currencies other than Singapore dollars;
 - (ii) in the case of a loan, advance or a facility whereby funds are made available, such loan, advance or facility is to be used outside Singapore;
 - (iii) in the case of a guarantee or letter of credit, such guarantee or letter of credit is made available to, and issued in favour of, a non-resident person (but excluding his permanent establishment in Singapore) or a person resident in Singapore in respect of any business carried on outside Singapore through a permanent establishment outside Singapore;
 - (iv) in the case of a loan, advance or a facility whereby funds are made available and such loan, advance or facility is made available to a person referred to in paragraph (a) of the definition of “specified person”, no interest, commission, fee or any other payment in respect of the credit facility is borne, directly or indirectly, by any person resident in Singapore (except in respect of any business carried on outside Singapore by a person resident in Singapore through a permanent establishment outside Singapore) or by any permanent establishment in Singapore;

- (v) in the case of a loan, advance or a facility whereby funds are made available and such loan, advance or facility is made available to a person referred to in paragraph (b) of the definition of “specified person”, no interest, commission, fee or any other payment in respect of the credit facility is deductible against any income of that person accruing in or derived from Singapore; and
 - (vi) in the case of a guarantee or letter of credit, no interest, commission, fee or any other payment in respect of the credit facility is borne, directly or indirectly, by any person resident in Singapore (except in respect of any business carried on outside Singapore by a person resident in Singapore through a permanent establishment outside Singapore) or by any permanent establishment in Singapore; or
- (b) any syndicated facility for the issue of any bonds, notes, certificates of deposit or other instruments of indebtedness provided to any specified person where the agreement for the facility is made on or after 11th July 1997, and where —
- (i) in the case of an agreement for a facility made before 14th August 1998, the bonds, notes, certificates of deposit or other instruments of indebtedness are in currencies other than Singapore dollars;
 - (ii) the proceeds from the issue of such bonds, notes, certificates of deposit or other instruments of indebtedness are to be used outside Singapore;
 - (iii) the person to whom such syndicated facility is provided is a person referred to in paragraph (a) of the definition of “specified person”, no interest, commission, fee or any other payment in respect of the syndicated facility is borne,

directly or indirectly, by any person resident in Singapore (except in respect of any business carried on outside Singapore by a person resident in Singapore through a permanent establishment outside Singapore) or by any permanent establishment in Singapore; and

- (iv) the person to whom such syndicated facility is provided is a person referred to in paragraph (b) of the definition of “specified person”, no interest, commission, fee or any other payment in respect of the syndicated facility is deductible against any income of that person accruing in or derived from Singapore;

“syndicated offshore underwriting facility” means any facility for the underwriting of bonds, notes, certificates of deposit or other instruments of indebtedness provided to a non-resident person (but excluding its permanent establishment in Singapore) or to a permanent establishment outside Singapore of a person resident in Singapore in respect of any business carried on outside Singapore through that permanent establishment where the agreement for the facility was made before 11th July 1997, and where —

- (a) the bonds, notes, certificates of deposit or other instruments of indebtedness are in currencies other than Singapore dollars;
- (b) the proceeds from the issue of such bonds, notes, certificates of deposit or other instruments of indebtedness are to be used outside Singapore; and
- (c) no interest, commission, fee payable or any other payment in respect of the underwriting facility is borne, directly or indirectly, by any person resident in Singapore (except in respect of any business carried on outside Singapore by a person resident in Singapore through a permanent establishment outside Singapore) or by any permanent establishment in Singapore.

Approval of syndicated offshore credit facility

3.—(1) The Minister, or such person as he may appoint, may approve any syndicated offshore credit facility, syndicated guarantee facility or any syndicated offshore underwriting facility for the purposes of these Regulations where the agreement for the credit, guarantee or underwriting facility is made at any time during the period from 1st April 1983 to 31st March 2003, and where he is satisfied that —

- (a) the syndicate providing the credit, guarantee or underwriting facility consists of not less than 3 parties;
- (b) the lead manager of the syndicate providing the credit, guarantee or underwriting facility is an approved securities company or a financial institution resident in Singapore or is a permanent establishment in Singapore of a non-resident financial institution, or where there are 2 or more lead managers, at least half of them are approved securities companies or financial institutions resident in Singapore or permanent establishments in Singapore of non-resident financial institutions; and
- (c) the syndication work in respect of the credit, guarantee or underwriting facility is carried out substantially in Singapore.

(2) Subject to these Regulations, there shall be exempt from tax the income of a financial institution or of an approved securities company from any such approved syndicated offshore credit or underwriting facility or syndicated guarantee facility.

(3) In the case of an underwriting facility or a syndicated facility referred to in paragraph (b) of the definition of “syndicated offshore credit facility” in regulation 2, where a financial institution or an approved securities company holds any of the notes, bonds or certificates of deposit or other instruments of indebtedness underwritten by the syndicate or issued under the syndicated facility, as the case may be, the income derived from the holding of those notes, bonds or certificates of deposit or other instruments of indebtedness or the profits arising from the sale thereof shall not be exempt from tax under these Regulations.

(4) The Minister may, in any particular case, waive the requirements specified in paragraph (1)(a), (b) and (c) subject to such conditions as he may impose.

(5) A financial institution or an approved securities company which is entitled to any exemption under paragraph (2) may, with the approval of the Comptroller, elect not to have such exemption.

Comptroller to determine amount of income to be exempted

4.—(1) The amount of the income to be exempted from tax under regulation 3(2) shall be determined by the Comptroller, having regard to such expenses and capital allowances allowable under the Act as are, in his opinion, to be deducted in ascertaining the income to be exempted.

[S 515/2013 wef 13/08/2013]

(2) In determining the amount of income to be exempted, any loss incurred in respect of an approved syndicated offshore credit or underwriting facility, or syndicated guarantee facility or any capital allowances attributable to that income shall only be deducted against income to be exempted under regulation 3(2), and any balance of such loss or capital allowances shall not be available as a deduction against any other income.

[S 515/2013 wef 13/08/2013]

(3) *[Deleted by S 515/2013 wef 13/08/2013]*

(4) Where the income to be exempted from tax under regulation 3(2) is income referred to in regulation 5(5)(b) or 6(6)(b), then the income to be so exempted shall be further reduced by the amount of deemed income referred to in regulation 5(5) or 6(6).

[S 236/2009 wef 17/01/2008]

(5) *[Deleted by S 236/2009 wef 17/01/2008]*

(6) *[Deleted by S 236/2009 wef 17/01/2008]*

Deduction of unabsorbed losses and capital allowances

5.—(1) Any balance of the losses and capital allowances referred to in regulation 4 remaining unabsorbed on the day the financial institution or approved securities company permanently ceases to

provide any approved syndicated offshore credit or underwriting facility or syndicated guarantee facility, or any syndicated offshore credit or guarantee facility to which the corresponding Regulations apply, shall be available as a deduction —

- (a) for the year of assessment which relates to the basis period in which the institution or company permanently ceases to provide such facility, against the following income of the institution or company and in the following order:
 - (i) any income subject to tax at the rate of tax of 5%;
 - (ii) any income subject to tax at a rate of tax other than 5% or the rate of tax specified in section 43(1)(a) of the Act;
 - (iii) any income subject to tax at the rate of tax specified in section 43(1)(a) of the Act;
- (b) so far as the deduction cannot be allowed under sub-paragraph (a), for any subsequent year of assessment against any income of the institution or company referred to in sub-paragraph (a)(i), (ii) and (iii) and in the order specified therein.

[S 515/2013 wef 13/08/2013]

(2) Capital allowances may be deducted under paragraph (1) only if the financial institution or approved securities company continues to carry on the same trade or business in respect of the gains or profits of which the allowances falls to be made, and the allowances shall be disregarded if the institution or company has ceased to do so.

(3) Section 37B of the Act shall apply to any deduction under sub-paragraphs (a) and (b) of paragraph (1) as if the balance of losses and capital allowances available as a deduction under those sub-paragraphs were unabsorbed losses and capital allowances in respect of income subject to tax at the rate of tax of 5%.

[S 515/2013 wef 13/08/2013]

(4) Sections 23(4) to (8) and 37(12) to (17) of the Act shall apply, with the necessary modifications, to any deduction under paragraph (1)(a) or (b).

(5) Where —

- (a) a deduction has been allowed under paragraph (1)(a) or (b) to a financial institution or an approved securities company for the year of assessment relating to any basis period (referred to in this paragraph as the initial basis period); and
- (b) the institution or company derives exempt income in any basis period subsequent to the initial basis period (referred to in this paragraph as the subsequent basis period),

then an amount equal to the lower of the following shall be deemed to be income derived by the institution or company in the subsequent basis period and chargeable to tax at the rate of tax of 5% for the year of assessment relating to that basis period:

- (i) the amount of the deduction allowed under paragraph (1)(a) or (b), less any amount or amounts deemed to be income of the institution or company by virtue of one or more earlier applications of this paragraph; and
- (ii) the amount of the exempt income derived in the subsequent basis period.

(5A) Where —

- (a) a deduction has been allowed under paragraph (1)(a) or (b) to a financial institution or an approved securities company for the year of assessment relating to any basis period (referred to in this paragraph as the initial basis period);
- (b) the amount deducted consists of or includes bad debt, provision for doubtful debt or impairment loss; and
- (c) in any basis period subsequent to the initial basis period (referred to in this paragraph as the subsequent basis period), the bad debt or any part of it is recovered, the provision or any part of it is written back or the impairment loss or any part of it is reversed (such reversal being recognised under FRS 39),

then an amount equal to the lower of the following shall be deemed to be income derived by the institution or company in the subsequent

basis period and chargeable to tax at the rate of tax of 5% for the year of assessment relating to that basis period:

- (i) the amount of the bad debt, provision for doubtful debt or impairment loss allowed as a deduction under paragraph (1)(a) or (b), less any amount or amounts deemed to be income of the institution or company by virtue of one or more earlier applications of this paragraph; and
- (ii) the amount of the bad debt so recovered, provision so written back or impairment loss so reversed.

[S 236/2009 wef 28/05/2009]

(6) In paragraph (5), “exempt income” means income that is exempt from tax under regulation 3(2), or regulation 4(1) of the corresponding Regulations.

[S 236/2009 wef 17/01/2008]

Deduction of bad debt, provision for doubtful debt and impairment loss

6.—(1) Any bad debt, provision for doubtful debt or impairment loss in respect of an approved syndicated offshore credit or underwriting facility or syndicated guarantee facility that is allowable as a deduction under the Act in any year of assessment to the financial institution or approved securities company that provided the facility, being the year of assessment relating to any basis period that is subsequent to the basis period in which the institution or company permanently ceases to provide any approved syndicated offshore credit or underwriting facility or syndicated guarantee facility, or any syndicated offshore credit or guarantee facility to which the corresponding Regulations apply, shall be deducted in the following manner:

- (a) for that year of assessment, against the following income of the institution or company and in the following order:
 - (i) any income subject to tax at the rate of tax of 5%;

- (ii) any income subject to tax at a rate of tax other than 5% or the rate of tax specified in section 43(1)(a) of the Act;
 - (iii) any income subject to tax at the rate of tax specified in section 43(1)(a) of the Act;
- (b) so far as the deduction cannot be allowed under sub-paragraph (a), for any subsequent year of assessment against any income of the institution or company referred to in sub-paragraph (a)(i), (ii) and (iii) and in the order specified therein.

(2) Section 37B of the Act shall apply, with the necessary modifications, to a deduction under sub-paragraphs (a) and (b) of paragraph (1) as if the bad debt, provision for doubtful debt or impairment loss available as a deduction under those sub-paragraphs were unabsorbed losses of the institution or company in respect of income subject to tax at the rate of tax of 5%.

(3) Section 37(12) to (17) of the Act shall apply, with the necessary modifications, to a deduction under sub-paragraphs (a) and (b) of paragraph (1) as if the bad debt, provision for doubtful debt or impairment loss available as a deduction under those sub-paragraphs were a loss incurred by the institution or company in a trade or business.

(4) Where —

- (a) any bad debt or provision for doubtful debt has been allowed as a deduction to a financial institution or an approved securities company under paragraph (1)(a) or (b); and
- (b) the bad debt or any part of it is subsequently recovered or the provision or any part of it is subsequently written back,

then the amount of the bad debt recovered or provision written back shall be deemed to be income derived by the institution or company in the basis period in which the bad debt is recovered or the provision written back and chargeable to tax at the rate of tax of 5% for the year of assessment relating to that basis period.

(5) Where —

- (a) any impairment loss has been allowed as a deduction to a financial institution or an approved securities company under paragraph (1)(a) or (b); and
- (b) the impairment loss or any part of it is subsequently reversed and such reversal is recognised under FRS 39,

then the amount of the reversal shall be deemed to be income derived by the institution or company in the basis period in which the reversal is made and chargeable to tax at the rate of tax of 5% for the year of assessment relating to that basis period.

(6) Where —

- (a) a deduction has been allowed under paragraph (1)(a) or (b) to a financial institution or an approved securities company for the year of assessment relating to any basis period (referred to in this paragraph as the initial basis period); and
- (b) the institution or company derives exempt income in any basis period subsequent to the initial basis period (referred to in this paragraph as the subsequent basis period),

then an amount equal to the lower of the following shall be deemed to be income derived by the institution or company in the subsequent basis period and chargeable to tax at the rate of tax of 5% for the year of assessment relating to that basis period:

- (i) the amount of the deduction allowed under paragraph (1)(a) or (b), less any amount or amounts deemed to be income of the institution or company by virtue of one or more earlier applications of this paragraph; and
- (ii) the amount of the exempt income derived in the subsequent basis period.

(7) In paragraph (6), “exempt income” means income that is exempt from tax under regulation 3(2), or regulation 4(1) of the corresponding Regulations.

[S 236/2009 wef 17/01/2008]

LEGISLATIVE HISTORY

INCOME TAX (INCOME FROM SYNDICATED OFFSHORE CREDIT AND UNDERWRITING FACILITIES) REGULATIONS (CHAPTER 134, RG 4)

This Legislative History is provided for the convenience of users of the Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) Regulations. It is not part of these Regulations.

1. G. N. No. S 35/1986 — Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) Regulations 1986

(G.N. No. S 64/1986 — Corrigenda)

Date of commencement : 14 February 1986

2. G. N. No. S 412/1990 — Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) (Amendment) Regulations 1990

Date of commencement : 16 November 1990

3. 1990 Revised Edition — Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) Regulations

Date of operation : 25 March 1992

4. G. N. No. S 101/1993 — Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) (Amendment) Regulations 1993

Date of commencement : 1 April 1993

5. G. N. No. S 72/1995 — Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) (Amendment) Regulations 1995

Date of commencement : 1 March 1994

6. G. N. No. S 508/1999 — Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) (Amendment) Regulations 1999

Date of commencement : 11 July 1997

7. G. N. No. S 508/1999 — Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) (Amendment) Regulations 1999

Date of commencement : 1 April 1998

- 8. G. N. No. S 508/1999 — Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) (Amendment) Regulations 1999**
- Date of commencement : 14 August 1998
- 9. 1998 Revised Edition — Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) Regulations**
- Date of operation : 15 September 1998
- 10. 2001 Revised Edition — Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) Regulations**
- Date of operation : 31 May 2001
- 11. G. N. No. S 14/2008 — Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) (Amendment) Regulations 2008**
- Date of commencement : 17 January 2008
- 12. G. N. No. S 236/2009 — Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) (Amendment) Regulations 2009**
- Date of commencement : 17 January 2008
- 13. G. N. No. S 236/2009 — Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) (Amendment) Regulations 2009**
- Date of commencement : 28 May 2009
- 14. G. N. No. S 515/2013 — Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) (Amendment) Regulations 2013**
- Date of commencement : 13 August 2013