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INCOME TAX ACT (CHAPTER 134)

INCOME TAX (EXEMPTION OF INCOME FROM SYNDICATED OFFSHORE FACILITIES) REGULATIONS 2003

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In exercise of the powers conferred by section 43A of the Income Tax Act, the Minister for Finance hereby makes the following Regulations:

Citation

1. These Regulations may be cited as the Income Tax (Exemption of Income from Syndicated Offshore Facilities) Regulations 2003.

Definitions

2. In these Regulations, unless the context otherwise requires —
“corresponding Regulations” means the Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) Regulations (Rg 4);

[S 237/2009 wef 17/01/2008]

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

[S 237/2009 wef 17/01/2008]

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

[S 237/2009 wef 17/01/2008]

“offshore credit facility” means —

(a) any facility where —

- (i) loans, advances or funds are made available to a person referred to in paragraph (a) of the definition of “specified person”;
- (ii) the loans, advances or funds made available are to be used outside Singapore; and
- (iii) no interest, commission, fee or other payment in respect of the 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;

(b) any facility where —

- (i) loans, advances or funds are made available to a person referred to in paragraph (b) of the definition of “specified person”;
- (ii) the loans, advances or funds made available are to be used outside Singapore; and
- (iii) no interest, commission, fee or other payment in respect of the facility is deductible against any income of that person accruing in or derived from Singapore;

(c) any facility where —

- (i) guarantees or letters of credit are made available to, and issued in favour of, a non-resident person

(other than 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; and

- (ii) no interest, commission, fee or other payment in respect of the 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;

(d) any facility where —

- (i) the issue of bonds, notes, certificates of deposit or other instruments of indebtedness is provided to a person referred to in paragraph (a) of the definition of “specified person”;
- (ii) the funds raised from the issue of such bonds, notes, certificates of deposit or other instruments of indebtedness are to be used outside Singapore; and
- (iii) no interest, commission, fee or other payment in respect of the 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

(e) any facility where —

- (i) the issue of bonds, notes, certificates of deposit or other instruments of indebtedness is provided to a person referred to in paragraph (b) of the definition of “specified person”;

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- (ii) the funds raised from the issue of such bonds, notes, certificates of deposit or other instruments of indebtedness are to be used outside Singapore; and
 - (iii) no interest, commission, fee or other payment in respect of the facility is deductible against any income of that person accruing in or derived from Singapore;

“offshore guarantee facility” means any facility where —

- (a) guarantees or letters of credit are made available to and issued in favour of a specified financial institution for the purpose of providing or participating in a loan made to a non-resident person (other than his permanent establishment in Singapore);
- (b) the loan is to be used outside Singapore; and
- (c) no interest in respect of the loan 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;

“related party”, in relation to any specified person, means any other person who —

- (a) controls the specified person, whether directly or indirectly;
- (b) is controlled by the specified person, whether directly or indirectly; or
- (c) together with the specified person, is controlled by a common person, whether directly or indirectly;

“specified financial institution” means —

- (a) a bank licensed under the Banking Act (Cap. 19);
- (b) a merchant bank approved by the Monetary Authority of Singapore; or

(c) a company approved under section 43A(1)(c) of the Act;

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

- (a) means a non-resident person (other than 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 offshore credit facility is made on or after 1st April 1998, includes a 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) and a permanent establishment in Singapore.

Application

3.—(1) These Regulations shall apply to any syndicated offshore facility which is an offshore credit facility or an offshore guarantee facility where —

- (a) the agreement for the facility is made during the period from 27th February 1998 to 31st December 2003 (both dates inclusive);
- (b) the facility is a syndicated facility, as determined in accordance with paragraph 1 of the Schedule;
- (c) the syndication work in respect of the facility is carried out substantially in Singapore, as determined in accordance with paragraph 2 of the Schedule; and
- (d) in the case of a facility where the agreement for the facility is made during the period from 27th February 1998 to 13th August 1998 (both dates inclusive), the facility is in currencies other than Singapore dollars.

(2) The Minister or such person as he may appoint may in any particular case waive any requirement specified in paragraph (1) or the Schedule, subject to such conditions as he may impose.

Tax exemption

4.—(1) Subject to these Regulations, there shall be exempt from tax the income of a specified financial institution from any syndicated offshore facility.

(2) Where a specified financial institution holds any bonds, notes, certificates of deposit or other instruments of indebtedness issued under a facility referred to in paragraph (d) or (e) of the definition of “offshore credit facility” in regulation 2, the exemption referred to in paragraph (1) shall not apply to any income derived from the holding of those bonds, notes, certificates of deposit or other instruments of indebtedness or the profits arising from the sale thereof.

(3) The exemption referred to in paragraph (1) shall not apply in relation to a syndicated offshore facility unless the agent bank of the facility has submitted to the Comptroller within such time as may be specified by the Comptroller —

- (a) a return on the facility and a declaration from the arrangers of the facility that the facility is a syndicated offshore facility;
- (b) a declaration from the specified person to whom the facility is provided and who has any related party in Singapore, that the funds from the facility have not been, and are not intended to be, transferred to that related party in Singapore; and
- (c) such other particulars as may be required by the Comptroller.

(4) A specified financial institution which is entitled to any exemption under paragraph (1) may elect not to have such exemption by notifying the Comptroller within the time referred to in paragraph (3) in such form as the Comptroller may require.

Determination of income exempted from tax

5.—(1) The exemption under regulation 4 shall apply to such amount of the income of a specified financial institution from any

syndicated offshore facility as may 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 amount of the income to be exempted.

[S 511/2013 wef Y/A 2013 & Sub. Ys/A]

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

[S 511/2013 wef Y/A 2013 & Sub. Ys/A]

(2A) *[Deleted by S 511/2013 wef 13/08/2013]*

(2B) Where the income to be exempted from tax under regulation 4(1) is income referred to in regulation 6(5)(b) or 7(6)(b), then the income to be so exempted shall be further reduced by the amount of deemed income referred to in regulation 6(5) or 7(6).

[S 237/2009 wef 17/01/2008]

(2C) *[Deleted by S 237/2009 wef 17/01/2008]*

(2D) *[Deleted by S 237/2009 wef 17/01/2008]*

(3) Where the funds raised from any syndicated offshore facility are used —

- (a) solely to refinance previous borrowings; or
- (b) partly outside Singapore and partly to refinance previous borrowings,

and where —

- (i) the previous borrowings were granted by a person resident in Singapore or permanent establishment in Singapore (other than those borrowings the income derived therefrom is exempt from tax under section 43A(3) of the Act); or
- (ii) the funds raised from previous borrowings were used in Singapore,

the income of a specified financial institution in relation to that syndicated offshore facility shall, for the purpose of paragraph (1), be

determined by multiplying the income from the syndicated offshore facility by $(1-A/B)$,

where A is the amount of the funds raised from the syndicated offshore facility used to refinance previous borrowings where —

- (i) the previous borrowings were granted by a person resident in Singapore or permanent establishment in Singapore (other than those borrowings the income derived therefrom is exempt from tax under section 43A(3) of the Act); or
- (ii) the funds raised from previous borrowings were used in Singapore; and

B is the total amount of the syndicated offshore facility.

Deduction of unabsorbed losses and capital allowances

6.—(1) Any balance of the losses and capital allowances referred to in regulation 5(1) and (2) remaining unabsorbed on the day the specified financial institution permanently ceases to provide any syndicated offshore facility, or any approved syndicated offshore credit or underwriting facility or syndicated guarantee facility referred to in the corresponding Regulations, shall be available as a deduction —

- (a) for the year of assessment which relates to the basis period in which the institution permanently ceases to provide such facility, against the following income of the institution 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; and

- (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 referred to in sub-paragraph (a)(i), (ii) and (iii) and in the order specified therein.

[S 511/2013 wef Y/A 2013 & Sub. Ys/A]

(2) Capital allowances may be deducted under paragraph (1) only if the specified financial institution 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 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 511/2013 wef Y/A 2013 & Sub. Ys/A]

(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 specified financial institution for the year of assessment relating to any basis period (referred to in this paragraph as the initial basis period); and
- (b) the institution 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 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 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 specified financial institution 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 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 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 237/2009 wef 28/05/2009]

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

[S 237/2009 wef 17/01/2008]

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

7.—(1) Any bad debt, provision for doubtful debt or impairment loss in respect of a syndicated offshore facility that is allowable as a deduction under the Act in any year of assessment to the specified financial institution 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 permanently ceases to provide any syndicated offshore facility, or any approved syndicated offshore credit or underwriting facility or syndicated guarantee facility referred to in the corresponding Regulations, shall be deducted in the following manner:

- (a) for that year of assessment, against the following income of the institution 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 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 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 in a trade or business.

(4) Where —

- (a) any bad debt or provision for doubtful debt has been allowed as a deduction to a specified financial institution 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 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 specified financial institution 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 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 specified financial institution for the year of assessment relating to any basis period (referred to in this paragraph as the initial basis period); and
- (b) the institution 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 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 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 4(1), or under regulation 3(2) of the corresponding Regulations.

[S 237/2009 wef 17/01/2008]

THE SCHEDULE

Regulation 3

CRITERIA FOR DETERMINING WHETHER FACILITY IS A SYNDICATED FACILITY WITH SYNDICATION WORK CARRIED OUT SUBSTANTIALLY IN SINGAPORE

1. For the purpose of regulation 3(1)(b), a facility shall be treated as a syndicated facility if the following conditions are satisfied:

- (a) the total amount of the facility is at least US\$20 million or the equivalent in another currency;
- (b) the facility is documented as one agreement; and
- (c) either —
 - (i) the facility has at least 3 lenders and, where there are fewer than 5 lenders, each lender has a share of at least 10% of the total amount of facility; or
 - (ii) in the case of a facility which provides guarantee or letter of credit in addition to provision of loan, advance or funds —
 - (A) the facility complies with sub-paragraph (i); or
 - (B) there are at least 3 issuers of the guarantee or letter of credit and, where there are fewer than 5 issuers, each issuer’s undertaking represents at least 10% of the total amount of the facility.

THE SCHEDULE — *continued*

2. For the purpose of regulation 3(1)(c), the syndication work in respect of a facility shall be treated as being carried out substantially in Singapore if all of the following functions are carried out by the specified financial institution:

- (a) originating and structuring of the facility;
- (b) running the book;
- (c) facility documentation; and
- (d) facility agency.

Made this 24th day of March 2003.

LIM SIONG GUAN
*Permanent Secretary,
Ministry of Finance,
Singapore.*

[MF R32.19.03 Vol. 7; AG/LEG/SL/134/2002/9 Vol. 1]