



Singapore Tax & Legal developments

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Greetings from your Tax & Legal team at Deloitte Singapore. We hope that you and your loved ones are staying safe and healthy despite these challenging times. As we navigate ourselves through this trying period, we are committed to giving you the support you need.

We are pleased to share the following with you:

Ministry of Finance (MOF) issued the summary of responses to public consultations on draft Income Tax (Amendment) Bill 2020 and draft Goods and Services Tax (GST) (Amendment) Bill 2020

On 2 October 2020, MOF issued the summary of responses on both draft Income Tax (Amendment) Bill 2020 and draft Goods and Services Tax (Amendment) Bill 2020. These were in response to the feedback gathered during the public consultation phase for both draft Bills conducted from 20 July 2020 to 7 August 2020. For more information on the public consultation phase held previously, you may wish to read our previous alert on the [draft Income Tax \(Amendment\) Bill 2020](#) and [draft Goods and Services Tax \(Amendment\) Bill 2020](#).

Summary of responses to public consultations on draft Income Tax (Amendment) Bill 2020 (ITA Bill 2020)

The draft Income Tax Act (ITA) Bill 2020 proposes legislative amendments to effect tax

changes arising from the various support measures introduced in the four Budgets (i.e. Unity, Resilience, Solidarity and Fortitude) and Ministerial Statement in August 2020, periodic review of the income tax regime, and technical amendments.

Key feedback for the draft ITA Bill 2020 pertained to the following tax changes: (i) introduce a surcharge for tax avoidance arrangements, (ii) extend and refine the upfront certainty of non-taxation of companies' gains on disposal of ordinary shares, and (iii) general tax treatment of COVID-19 support measures.

Most of the MOF's responses were directed to the feedback received concerning the introduction of a surcharge for tax avoidance arrangement.

The surcharge for tax avoidance arrangements was first brought up during the public consultation phase. Broadly, under the proposed legislative changes, a surcharge equal to 50% of the amount of additional income tax will be imposed by the Comptroller on tax adjustments made to counteract the tax avoidance arrangements to further deter such arrangements. Currently, these tax adjustments made by the Comptroller for tax avoidance arrangements only restore taxpayers to their initial tax position, as if the arrangement had not been entered into. The proposed surcharge is expected to apply to adjustments made to the tax assessment for Year of Assessment (YA) 2023 and subsequent YAs under the draft ITA Bill 2020.

A similar surcharge is also being proposed for the Stamp Duties Act. This is in view that the Stamp Duties Act contains a similar provision as the Income Tax Act in respect of tax avoidance arrangements. The proposed surcharge is to apply to instruments or deemed instruments executed or deemed executed on or after the date of the Income Tax (Amendment) Act 2020 is published in the Gazette.

In particular, the following feedback and summarised MOF's responses were issued as follows:

Feedback	Summarised MOF's responses
The surcharge of 50% is too high.	Currently, there is no surcharge being imposed on tax avoidance arrangements, and the existing anti-avoidance provisions only restore taxpayers to their initial tax position, as if the arrangement had not been entered into. The proposed surcharge quantum is set at 50% to ensure that there is sufficient deterrence against tax avoidance arrangements.
Provide clarity on how the penalty provisions (i.e. sections 94, 95, 96, and 96A of the ITA would work in tandem with the surcharge.	The penalty provisions under sections 94, 95, 96 and 96A of the ITA, and the proposed surcharge under section 33A of the ITA, serve different purposes. The penalty provisions under sections 94, 95, 96 and 96A of the ITA relate to general penalties, penalties for filing of incorrect tax return and tax evasion penalties, and are imposed on a taxpayer who committed such offences. These are separate from the proposed surcharge under section 33A of the ITA, which will be imposed on a taxpayer who entered into a tax avoidance arrangement.

More information on the feedback and summary of responses for the draft ITA Bill 2020 are available on MOF's website [here](#).

Summary of responses to public consultations on draft Goods and Services Tax (Amendment) Bill 2020 ("GST Bill 2020")

The draft GST Bill 2020 proposes legislative amendments to introduce measures to enhance the Comptroller of GST's powers to safeguard public monies and investigate tax offences. It also proposes changes arising from the periodic review of the GST regime and technical amendments.

Key feedback for the draft GST Bill 2020 pertained to these tax changes: (i) introduce measures to counter Missing Trader Fraud, (ii) enhance the GST rules to counteract tax avoidance arrangements, and (iii) introduce a surcharge for tax avoidance arrangements.

Some of the MOF's responses relate to one of the proposed measures to counter Missing Trader Fraud in which the Comptroller of GST will be allowed to deny a GST-registered business' input GST claim, if the business knew or should have known that his purchase was part of or connected with a fraudulent arrangement.

The MOF provided three responses to feedback submitted on the denial of input GST claims where a business knew or should have known that the purchase was part of or connected with a fraudulent arrangement as follows:

Feedback	Summarised MOF's responses
Limit compliance cost for businesses and adopt a targeted approach to counter Missing Trade Fraud	<p>Missing Trader Fraud can be adapted, and perpetrated across industries. Applying our proposed amendments to only selected industries or groups of persons will dampen the effectiveness of this measure in countering Missing Trader Fraud, as syndicates will likely target businesses or transactions that fall outside the scope of the proposed measure. Such businesses or transactions will become more vulnerable to Missing Trader Fraud.</p> <p>It is in the interest of all businesses to conduct due diligence checks on their transactions, as part of good corporate governance. Bona fide businesses would generally already conduct due diligence checks on their transactions.</p> <p>Under the proposed amendment, the burden of proving that the GST-registered business knew or should have known of the fraudulent arrangement lies on the Comptroller, with the standard of proof being the balance of probabilities. Businesses that disagree with the Comptroller's decision may apply for review and revision of the decision under section 49 of the GST Act. If businesses disagree with the Comptroller's review and revision of the decision, they may appeal to the GST Board of Review.</p>

Provide guidance on what constitutes “reasonable steps”, which businesses should take to avoid being involved in a fraudulent arrangement

The Inland Revenue Authority of Singapore (IRAS) will publish an e-Tax Guide to provide such guidance on what amounts to “reasonable steps” in relation to the due diligence checks, as well as actions and precautions that GST-registered businesses could take in response to the risks identified through the checks. IRAS will also continue to conduct industry outreach on the due diligence checks that GST-registered businesses can conduct to avoid being involved in Missing Trader Fraud.

Examples of these reasonable steps include, and are not limited to, the following:

- Verifying the legitimacy of the customers and suppliers by checking their identification, background and their experience in the trade
- Understanding the market, such as whether the volume and value of goods transacted are reasonable relative to the market demand and price.
- Understanding the goods being transacted, such as knowing the brand, manufacturer, origin of the goods and verifying that the goods are in working condition.

In general, businesses should be wary of high-value deals offered by newly established or unknown suppliers, and deals that seem “too good to be true”.

Clarify if GST-registered businesses which took reasonable steps to avoid being part of a fraudulent arrangement but ended up being involved in such arrangement would have their input tax claims denied and the surcharge of 10% imposed.

If the Comptroller assesses that businesses took reasonable steps to ascertain whether the supply was part of a fraudulent arrangement and concluded that the supply was not a part of such arrangement, and that the conclusion is one that a reasonable person would have made, their input GST claims would not be denied. Correspondingly, the surcharge of 10% would not be imposed.

More information on the feedback and summary of responses for the draft GST Bill 2020 are available on MOF’s website [here](#).

The draft ITA Bill 2020 (Bill No. 38/2020) and draft GST Bill 2020 (Bill No. 39/2020) was introduced to the Parliament on 5 October 2020 and 6 October 2020 respectively. They will be subject to debate by the Parliament at the next available sitting upon introduction.

Businesses are concerned with the following two areas based on the public feedback received by the MOF:

- a. Enforcement of tax avoidance arrangements under both draft ITA Bill 2020 and draft GST Bill 2020

The financial impact to businesses could be significant if the Comptroller of Income Tax and/or Comptroller of GST is of the view that an arrangement constitutes tax avoidance. Even though businesses have the right to appeal against the Comptroller's assessment, businesses are required to settle any tax assessments, including the proposed 50% surcharge, in full before the appeal is heard.

The line on what is legitimate tax planning and tax avoidance may not be entirely clear at times. This is especially so for complex arrangements which depend largely on the evidence available and the facts and circumstances surrounding the arrangements. With an increased focus on "getting things right" and the quantum of surcharge involved, proactive steps will need to be undertaken by businesses at the outset to establish a robust tax defense and mitigate any adverse tax exposure in respect of arrangements that give rise to a tax benefit so as to support the arrangement was carried out for bona fide commercial reasons and had not as one of its main purposes the avoidance or reduction of tax.

- b. Measures introduced for Missing Trader Fraud under draft GST Bill 2020

The administrative burden on GST-registered businesses is going to increase as a result of the concerns around Missing Trader Fraud. In particular, GST-registered businesses will be expected to take "reasonable steps" to avoid being involved or deemed involved in a Missing Trader Fraud and they will need to be able to show what steps they took to satisfy IRAS in the event of a challenge. Otherwise, input GST claims could be denied and with the addition of possible surcharges, the financial exposure could be sizeable.

IRAS' guidance on what amounts to "reasonable steps" in relation to due diligence checks, which will be issued in due course, would be helpful for GST-registered businesses. GST-registered businesses should use this guidance to identify and address any gaps in their current vendor due diligence processes.

For businesses on Assisted Compliance Assurance Programme (ACAP) and

undergoing Assisted Self-help Kit (ASK) reviews, the IRAS will likely introduce new required GST control features to be evidenced, similar to what they have done for new GST regimes like GST reverse charge as well as GST customer accounting. Such controls could form part of the process for non-ACAP/ASK businesses too.

Contact

For more information on the above or any other matters, please contact either the listed contacts below, or any member of the [Singapore Tax & Legal team](#).

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