

Sender's Fax: 6533 5700
Sender's DID: 6530 0229
Sender's Email: represent@lawsoc.org.sg

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Ministry of Finance
100 High Street
#10-01 The Treasury
Singapore 179434

BY E-MAIL ONLY

E-mail: NG_Hui_Li@mof.gov.sg
No. of pages: 3 pages
(including this page)

Attention: Ms Ng Hui Li
Deputy Director 1 (Tax Policy)

Dear Ms Ng

PUBLIC CONSULTATION ON INCOME TAX (AMENDMENT) BILL 2009

We refer to your e-mail request dated 22 June 2009 inviting the Law Society to provide our feedback on the public consultation on the Income Tax (Amendment) Bill 2009.

An ad hoc committee was appointed to review the consultation paper.

We are pleased to enclose our ad hoc committee's feedback on the matter for your consideration.

Thank you for giving the Law Society the opportunity to give our views on the matter.

Yours sincerely

Alvin Chen
Director, Representation and Law Reform Department

Encl.



THE LAW SOCIETY
OF SINGAPORE

39 South Bridge Road
Singapore 058673
Tel: 6538 2500
Fax: 6533 5700
Email: lawsoc@lawsoc.org.sg
Website: www.lawsociety.org.sg

PRO BONO SERVICES OFFICE
1 Havelock Square Level 5
Subordinate Courts Complex
Singapore 059724
Tel : 6536 0650
Tel : 6534 1564 (CLAS)
Fax: 6534 5237
Email: ProBonoServices@lawsoc.org.sg
Email: CLAS@lawsoc.org.sg

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**Public Consultation of The Draft Income Tax (Amendment) Bill 2009 -
Submission of Comments**

Date Submitted:			
Name:		For non-individuals, please identify the company, institution or association and provide the name of a contact person.	
Contact Details:		E.g. DID, fax, email address	
Summary of feedback:			
Details:			
No.	Tax Change^a	Comments^b	Proposed change to draft Income Tax (Amendment) Bill
1	Tax treatment of profit or loss arising from certain real property disposals. Clause 5 of the draft Bill.	<p>It ought to be axiomatic that all profits or losses arise from acquisition and disposal. Neither acquisition nor disposal alone results in any profit or loss.</p> <p>The taxation of a property transaction depends on the income or capital flavour of the acquisition of the property together with its disposal.</p> <p>The view that one might form of whether an acquisition-and-disposal is or is not of an income nature can depend on — indeed will be influenced by — the person’s previous — or perhaps even subsequent — property acquisitions and disposals.</p> <p>The process involves considering or comparing the similarities or dissimilarities between transactions.</p> <p>The proposal to use the disposal ends of two different property transactions as the determinant of liability is certainly novel. That is about as useful or logical as comparing two different acquisitions or, indeed, the one acquisition in one transaction with the disposal in another transaction.</p> <p>Firstly, then, the proposed amendment is harmful to the basic jurisprudence of the principal Act and the case law.</p>	Delete as being of no advantage whatsoever; positively damaging.

**Public Consultation of The Draft Income Tax (Amendment) Bill 2009 -
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		<p>Secondly, the clear and invidious implication is to jeopardise fact situations presently not in doubt under the existing law.</p> <p>Thirdly, it is defective as a “four-year rule” (on the assumption that such was the intention). <i>Cf</i> the three-year rule under the now-deleted ss 10G & F of the principal Act, or the existing Income Tax (Approved Investment Companies) Regulations.</p> <p>Taxpayers would find a three-year rule of the kind found in other countries — and which previously operated in Singapore under the now-deleted ss 10G & F — to be much more explicable.</p>	
2	<p>Review of tax treatment of management fees under section 12(7)(c), etc.</p> <p>Clause 7 of the draft Bill.</p>	<p>It is logical and praiseworthy to exclude income unconnected with any business or permanent establishment in Singapore from the deemed-source provisions in s 12(6) of the principal Act.</p> <p>Likewise we applaud the statutory exclusion of technical and management fees unconnected with any business or permanent establishment in Singapore from the deemed-source provisions in s 12(7) of the principal Act. The proposed amendment surpasses the existing 32-year-old press statement.</p>	None.
3	<p>Arm’s length principle.</p> <p>Clause 25 of the draft Bill.</p>	<p>The arm’s length principle is the international transfer pricing standard agreed between countries that is to be used by multinational enterprises and the tax authorities of their respective host countries.</p> <p>It ensures the proper allocation of revenues between two different tax authorities.</p> <p>The proposed amendment is only half-finished since it omits essential elements of the arm’s length principle.</p> <p>Also, the result is mischief if additional profits are included in the profits of one person without a corresponding adjustment in the profits of the other.</p>	<p>Firstly, it has to be stated that the arm’s length principle applies in the international context.</p> <p>Secondly, where profits are included in the income of one person and taxed accordingly, then there has to be a corresponding downward adjustment in the profits of the other person.</p>

^a To quote the title of the tax change as well as the relevant Section(s) of the draft Income Tax (Amendment) Bill 2009. Please refer to the Summary Table for reference.

^b Illustrations and diagrams could be attached as Annexes.