Annex A: MOF's responses to key feedback on the draft Income Tax (Amendment) Bill 2021

1. Proposed Amendment: Provide the tax treatment for two situations: (a) trading stock is appropriated for non-trade or capital purposes, and (b) non-trade or capital asset becomes trading stock

a) Feedback: The new section 10P of the Income Tax Act ("ITA") introduces a taxing point where trading stock is appropriated for capital or non-trade purposes. It attempts to tax income that is unrealised, and correspondingly allows taxpayers to make a claim on unrealised losses. This is inconsistent with the principle where only realised income and losses are recognised for income tax purposes.

Response: **Not accepted**. Singapore has an income tax but not a capital gains tax. Thus, gains that are of a revenue nature are subject to income tax, and losses that are revenue in nature are allowed. Tax deductions are also allowed for expenses incurred when the asset is held as a trading stock. Conversely, gains that are of a capital nature are not taxed, and losses of a capital nature are not allowed. Expenses incurred when the asset is a non-trade or capital asset are not tax-deductible.

At times, trading stock held by taxpayers may be appropriated for non-trade or capital purposes, and vice versa. The new section 10P of the ITA ensures that gains and losses of a revenue nature are recognised for income tax purposes, at the point where trading stock is appropriated for non-trade or capital purposes. Accordingly, as and when trading stock is appropriated for non-trade or capital purposes, the market value of the trading stock on the date of appropriation is treated as income and any gain is subject to income tax while any loss is allowed.

Conversely, where a non-trade or capital asset becomes a trading stock that is subsequently sold, the new section 32A of the ITA provides that the cost of the trading stock is its market value on the date the non-trade or capital asset becomes trading stock. The gain or loss from the subsequent disposal of the trading stock is then computed accordingly.

b) Feedback: In general, the donation of trading stock should not come within the scope of the new section 10P of the ITA. Deeming income on the donations would seem to discourage charitable giving.

Response: **Accepted.** To ensure that the new tax treatment does not undermine the policy objective of encouraging philanthropy where the appropriated trading stock qualifies for enhanced tax deductions under section 37(3)[1] of the ITA, we will provide an exception. Under the exception, we will treat the acquisition cost of the trading stock, instead of the market value on the date of appropriation of the trading stock for donation, as income under section 10P of the ITA. The net result is that there will be no net gain or loss on the appropriation to be subject to income tax. The taxpayer continues to fully enjoy the enhanced deduction in respect of a qualifying donation.

To reduce taxpayers' compliance burden, the donation of trading stock that are perishable items will also be exempted from the new reporting requirements.

[1] Section 37(3) of the ITA provides for 250% enhanced tax deduction for qualifying donations of artefacts, sculptures or works of art, shares and immovable property, made to an approved museum or institution of a public character as appropriate.

For avoidance of doubt, items that have been identified upfront for donation are not trading stock and are therefore not affected by section 10P.

c) Feedback: It is inconsistent and inequitable for taxpayers where under the new section 10P of the ITA, the taxpayers would be treated as having derived income based on the market value of the trading stock as at the date of appropriation for use as plant or machinery, but under the proposed amendments to sections 19(10) and 19A(14D) of the ITA, taxpayers are granted capital allowances based on the lower of the market value of the trading stock on the date of appropriation and its cost.

Response: **Accepted**. Proposed legislative changes will be made to sections 19(10) and 19A(14D) of the ITA to reflect that the capital expenditure incurred on the provision of qualifying machinery or plant is the open market value of the trading stock as at the date of the appropriation.

d) Feedback: The Comptroller should not be allowed to raise assessments beyond the time-bar period prescribed in section 74 of the ITA.

Response: **Noted feedback.** The new section 10P of the ITA does not allow the Comptroller to raise assessments beyond the time-bar period prescribed in section 74 of the ITA. Where taxpayers fail to inform the Comptroller of an appropriation of trading stock for non-trade or capital purposes, or where taxpayers misrepresent to the Comptroller any information relating to the appropriation of trading stock, section 10P of the ITA allows the time-bar period to commence in the year of assessment in which the Comptroller discovers sufficient facts to reasonably conclude that an appropriation of the trading stock had taken place.

2. Proposed Amendment: Introduce a requirement for taxpayers to give IRAS a written notice when a foreign tax authority makes a downward adjustment of foreign tax which results in the foreign tax credit previously allowed in Singapore becoming excessive

Feedback: To increase the period to give a written notice from six months to one year, from the date of the downward adjustment of foreign tax as taxpayers might not be made aware of the downward adjustment in a timely manner, especially where withholding taxes are involved.

Response: **Accepted.** We recognise that taxpayers may need more time to notify IRAS of a downward adjustment of foreign tax, especially where the foreign tax is a withholding tax paid in a foreign territory. This is because the foreign tax authority is likely to inform the payer of the withholding tax, and not the recipient of the payment, of any downward adjustment. Hence, a taxpayer in Singapore who is the recipient of the payment may not be aware of the downward adjustment immediately.

With this revision to increase the period to give a written notice from six months to one year, we will also increase the period for taxpayers to make claims for foreign tax credits and for IRAS to raise additional assessments from two to three years, arising from the adjustments of foreign tax.

3. Proposed Amendment: Allow persons authorised by IRAS to have access to necessary IRAS records and/or documents for the audit of the administration of public schemes

Feedback: Unlike the other exceptions in the existing section 6 which allow sharing of information with other competent tax authorities and government agencies only, the new section 6(11B) will be much wider in scope as it allows the sharing of taxpayers' information with persons in the private sector. Hence, it will be helpful to include a provision on how long such data can be retained by private sector auditors, and to ensure that where applicable, the private sector auditors will ensure the proper destruction of the relevant data when the audit has been completed as an additional safeguard.

Response: **Accepted.** IRAS currently does not allow external persons to retain or make copies of any protected data, and intends to also prohibit auditors of the public schemes from doing so. We will include a new provision to prohibit authorised persons from using protected data (including making copies of the protected information) other than for the purpose of auditing the public schemes specified in the Ninth Schedule of the ITA and Sixth Schedule of the Goods and Services Tax Act ("GSTA").

4. Proposed Amendment: Introduce a protection of informers provision

a) Feedback: Respondents suggest that the words "name or address" be replaced with the word "identity" in section 104A(1)(b)(ii). The provision should seek to protect the informer's identity, which may not be confined to name or address.

   Response: **Accepted.** The suggestion is in line with the policy intent to protect the informer's identity, which may not necessarily be confined to the informer's name or address.

b) Feedback: To clarify what is considered 'information (disclosed by an informer for an offence under the Income Tax Act)' referred to in section 104A(1)(a) – whether this prevents the thing (e.g. the original fraudulent invoice) which the informer provided to the IRAS from being admitted as evidence. Respondent suggests that the words "information disclosed by" be replaced with the words "communication from".

   Response: **Not accepted.** The policy intent is to protect the identity of the informer. It is not to prevent important documents such as fraudulent invoices from being admitted as evidence when they are obtained after commencement of subsequent investigative actions. While this particular feedback has been rejected, we have made amendments to the draft Bill by deleting the line "no information disclosed by an informer for an offence under this Act may be admitted in evidence in any civil or criminal proceedings" to ensure that important documents such as fraudulent invoices are not being prevented from being admitted as evidence when they are obtained after commencement of subsequent investigative actions.