



**Some Highlights on:  
“Global Forum on Transparency and Exchange of  
Information for Tax Purposes Peer Reviews:  
Singapore 2011”**

**Phase 1**

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*commodity in asia,  
a source of wealth.*

# About Singapore

- A stable, competitive and open economy with one of highest per capita GDP in the world.
- As a major financial hub, it has more than 700 local and foreign financial institutions, including 120 commercial banks (with assets of SGD1,776 billion) and 46 merchant banks (with assets of SGD 84.7 billion). The 700 institutions include 114 foreign banks, of which 38 were offshore banks.

# About Singapore

- The financial services sector accounted for approximately 13.5% of GDP, with banking, insurance and wealth management accounting for 53.4%, 21.1% and 7% of the breakdown, respectively.
- In addition, there were 245 capital markets services licensees, performing a variety of dealing and trading, advising on corporate finance, fund management and providing custodial services for securities; and 132 financial advisers and insurance brokers. AUM totaled SGD 1,208 billion.

# Introduction

- On 6 March 2009, Singapore endorsed the enhanced OECD Standard for exchange of information (EOI).
- In order to meet the new standard, Singapore had to:
  - Change its domestic law and Income Tax Act
  - Volunteer to “in-depth monitoring and peer review of the implementation” as a member of the Global Forum

# About the Global Forum

- The Global Forum is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions.
- The Global Forum is charged with in-depth monitoring and peer review of its members to ensure that the new EOI standard is adopted and implemented.
- These standards are primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters, and in Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary as updated in 2004. These standards have also been incorporated into the UN Model Tax Convention.

# About the Global Forum Peer Review

- The peer review process has two phases:
  - Phase 1: to examine the legal and regulatory framework
  - Phase 2: to evaluate the implementation of the standard in practice
- Each peer review takes about 3 years. For Singapore:
  - Phase 1 started 2H 2010, completed Jun 2011
  - Phase 2 scheduled for 2H 2012

# Exchange of Information Policy

- In terms of exchange of information, Singapore's policy is to negotiate DTCs rather than tax information exchange agreements (TIEAs).
- It has amended its domestic legislation to allow it to fully exchange information in accordance with the terms of a DTC containing wording akin to the current text of Article 26 of the OECD Model Tax Convention.



# Acceptance of International Standard

- In March 2009, Singapore committed to the internationally agreed standard for exchange of information (EOI) in tax matters. In October 2009, the Singapore Parliament passed the Income Tax (Amendment) (EOI) Bill to lift the domestic interest requirement and allow the exchange of bank and trust information.
- Singapore has since then actively sought to update and extend its network of double tax conventions. Generally, it is signatory to 70 double tax conventions providing for EOI. As of today, 30 of those 70 double tax conventions are enhanced agreements, providing for EOI according to the international standard.



# Singapore's Double Tax Conventions

Comprehensive Avoidance of Double Taxation Agreements



Australia



Austria



Bahrain



Bangladesh



Belgium



Brunei



Bulgaria



Canada



China



Cyprus



Czech Republic



Denmark



Egypt



Estonia



Fiji



Finland



France



Georgia



Germany



Hungary



India



Indonesia



Ireland



Israel



Italy



Japan



Kazakhstan



South Korea



Kuwait



Latvia



# Singapore's Double Tax Conventions



Libya



Lithuania



Luxembourg



Malaysia



Malta



Mauritius



Mexico



Mongolia



Myanmar



Netherlands



New Zealand



Norway



Oman



Pakistan



Papua New Guinea



Philippines



Poland



Portugal



Qatar



Romania



Russian Federation



Saudi Arabia



Slovak Republic



Slovenia



South Africa



Sri Lanka



Sweden



Switzerland



Taiwan



Thailand



Turkey



Ukraine



United Arab Emirates



United Kingdom



Uzbekistan



Vietnam



# Singapore's Double Tax Conventions

## Limited Treaties



Bahrain



Chile



Hong Kong



Oman



Saudi Arabia



United Arab Emirates



United States of America

## Treaties which are Signed but not Ratified



Albania



Bahrain



Belgium



Estonia



India



Italy



South Korea



Malta



Mexico



Morocco



Panama



Qatar



Spain



Switzerland



Uzbekistan



# Enhanced Double Tax Conventions

1. Albania
2. Australia
3. Austria
4. Bahrain
5. Belgium
6. Brunei
7. China
8. Denmark
9. Estonia
10. Finland
11. France
12. Georgia
13. India
14. Ireland
15. Italy
16. Japan
17. Malta
18. Mexico
19. Netherlands
20. New Zealand
21. Norway
22. Panama
23. Qatar
24. Saudi Arabia
25. Slovenia
26. South Korea
27. Spain
28. Switzerland
29. UK
30. Uzbekistan



# Access Power of Tax Authorities

- Singapore's tax authorities have broad access powers and can obtain an Order by the High Court to access protected bank and trust information. When making the Order, the High Court must be satisfied that the disclosure of the protected information is not contrary to 'public interest' and that it is not information subject to 'legal privilege'.
- The term 'public interest' is not otherwise defined in the ITA but Singaporean authorities indicate it has the same meaning as the concept of public policy endorsed by Article 26(3) of the Model Tax Convention.



# Access Power of Tax Authorities

- The definition of information subject to legal privilege that cannot be disclosed under a prescribed EOI request is limited to communication made in connection with the giving of legal advice to a client or with judicial proceedings; nonetheless, the litigation privilege appears to include not only information enclosed within a communication between an attorney and client but also within a communication between a client and another person who is not an attorney-at-law, which is beyond the exemption for attorney-client privilege under the international standards.
- The definition also appears to go beyond the standards in that information covered is not limited to confidential communications between an attorney and his client. The issue will be followed up in Phase 2 of the review process.



# Absence of Dual Criminality Principles

- This principle provides that assistance can only be provided if the conduct being investigated (and giving rise to the information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.
- None of the EOI agreements concluded by Singapore applies the dual criminality principle to restrict the exchange of information.



# Overriding of Secrecy Provisions

- Section 65B ITA, however, does not in itself enable the Comptroller to override any existing secrecy provisions: section 65B(2) of the ITA explicitly states that “no person shall by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy”.
- Information covered by statutory obligations to observe secrecy include both bank and trust information. bank and trust confidentiality is protected under s.47 of the Banking Act and s.49 of the Trust Companies Act, respectively.

# Legislative Amendment to Accept Article 26

- With the legislative amendment in 2009, IRAS has powers to obtain protected bank and trust information regarding any person's income for purposes of a request for information made under a prescribed double taxation convention (DTC). To exchange information protected by bank or trust secrecy under a prescribed DTC, the IRAS must obtain an order by the High Court (s.105J ITA).
- Procedures to safeguard taxpayers' rights are envisaged as part of the international standard, insofar as they do not unduly delay the effective exchange of information. A practical assessment of whether this procedure imposes an impediment to the exchange of information will be made in the Phase 2 Peer Review of Singapore. The Review is to ensure that it does not prevent Singapore from responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.



# Eighth Schedule

- The Eighth schedule of the ITA describes the list of information to be included in a request for information filed under a “prescribed arrangement”. However, s.105D(2) of the ITA provides that the Comptroller can waive any of these requirements. Some of the key items are:
  - Grounds for believing that the requested information is being held by our competent authorities, or is in the possession or control of a person in Singapore;
  - The name and address of any person believed to have possession or control of the information requested for;
  - A statement that the country has pursued all available means to obtain the information domestically, which includes requesting it directly from the person involved;
- The international standard does not allow fishing expeditions, i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation.
- The practical implementation of these provisions will be assessed in Phase 2.

# Treatment of TIEAs

- Part XXA of the ITA does not apply to TIEAs. As a result, the legislation does not provide Singapore's competent authority the power under a TIEA to obtain and provide to requesting competent authorities relevant information held by banks, other financial institutions, and any person with a statutory secrecy obligation.
- So far, however, Singapore has not concluded any TIEAs.

# What to Expect in Phase 2

- Review actual implementation:
  - Focus on effectiveness of EOI.
  - Effectiveness will depend on the practice of the competent authorities.
  - Rights and safeguards of taxpayers and third parties are respected.

# Summary

- Singapore has amended its legislation to comply with Article 26 of OECD Model Tax Convention, with procedural safeguards found in the Eighth Schedule.
- Singapore has 70 double tax conventions of which 30 have been enhanced.

# Summary

- When making an Order to access information, the disclosure must not be contrary to public interest and legal privilege.
- A practical assessment of whether Singapore's procedures imposes an impediment to exchange of information will be made in Phase 2 of the Peer Review in 2012.