Annex A: MOF's responses to key feedback on the draft Income Tax (Amendment) Bill 2023

1. Proposed Amendment: Tax gains from the sale or disposal of foreign assets that are received in Singapore by businesses without economic substance in Singapore

a) Feedback: To allow foreign-sourced disposal losses to be set-off against foreign-sourced disposal gains.

Response: **Accepted.** We will allow the set-off of foreign-sourced disposal losses against foreign-sourced disposal gains that are subject to tax. The set-off will be restricted to foreign-sourced disposal losses that would have otherwise been brought to tax if they were gains. In addition, unutilised foreign-sourced disposal losses may be carried forward indefinitely for set-off against foreign-sourced disposal gains in future years.

b) Feedback: To allow expenses incurred to protect or preserve the value of the foreign asset to be deductible from foreign-sourced disposal gains that are taxable.

Response: **Accepted.** We will allow such expenses incurred to be deductible from foreign-sourced disposal gains that are taxable, provided these expenses have not been deducted against any other income.

c) Feedback: To expand the definition of pure equity holding entities ("PEHE") to include investment holding entities ("IHE") that hold investments in the form of debts/bonds/notes/convertible instruments/funds. The feedback arose as the draft legislation required non-PEHE to carry on a trade, business, or profession in Singapore. IHEs might not meet this condition as they are passive holding entities.

Response: **Partially accepted.** The current definition of PEHE is aligned with the internationally accepted definition (as referenced in the BEPS Action 5 2017 Progress Report[1]). Hence, we are unable to expand the PEHE definition as suggested.

However, we agree that IHEs may not carry on a trade, business or profession in Singapore. The requirement for non-PEHEs to carry on a trade, business, or profession in Singapore will therefore be removed.

d) Feedback: To prescribe in legislation bright-line tests (such as prescribing minimum thresholds) to establish whether economic substance requirements are met. This will reduce uncertainty for taxpayers in determining if disposal gains are subject to tax.

Response: **Not accepted.** It will not be practical to prescribe in legislation minimum thresholds to establish economic substance as business models and scale of operations of entities may vary even within the same sector. Instead, IRAS will provide further guidance through an e-Tax Guide, including examples for certain sectors.

[1] https://www.oecd.org/tax/beps/harmful-tax-practices-2017-progress-report-on-preferential-regimes-9789264283954-en.htm

2. Proposed Amendment: Introduce the Enterprise Innovation Scheme ("EIS")

a) Feedback: To allow EIS benefits to be carried forward for at least five years to make the scheme more attractive for early-stage ventures that are not yet profitable.

Response: **Noted feedback**. EIS enhanced deductions/allowances that cannot be fully offset against the income of a business are treated as unutilised trade losses or allowances, and can be carried forward indefinitely, subject to conditions. In addition, the cash payout option of EIS (cash conversion ratio of 20% on up to $100,000 of total qualifying expenditure across all qualifying activities for each Year of Assessment ("YA"), in lieu of tax deductions/allowances) will support businesses that make little or no profits.

b) Feedback: To expand the scope of qualifying expenditure under the deduction for expenditure incurred on qualifying innovation projects to include expenditure paid to an intermediary or service provider who in turn collaborates with approved educational or research institutions.

Response: **Accepted for further study**. We will study the uptake of the tax deduction and review the potential expansion in qualifying expenditure.

3. Proposed Amendment: Introduce the Philanthropy Tax Incentive Scheme for Family Offices ("FOs") ("PTIS")

a) Feedback: To not require Single FOs ("SFOs") who have already applied for the S13O or S13U tax incentive to go through a separate application process for PTIS.

Response: **Not accepted.** As additional economic conditions have to be met for the PTIS, a separate application process for SFOs to qualify for the PTIS is necessary.

b) Feedback: To allow the clawback of non-compliant PTIS tax deductions to be taxed at the rate in the YA when the tax deduction was claimed (e.g., concessionary tax rate) instead of at the rate in which the donor's income is taxed in the YA when the non-compliance is discovered (e.g., normal tax rate).

Response: **Not accepted**. It is administratively cumbersome to track the tax rate at which tax deductions on each donation was claimed in prior years. The provision to treat the clawback as income for the YA in which the Comptroller discovers the non-compliance is aligned with other existing tax schemes.