ANNEX

Summary of key public feedback received on the Income Tax (Amendment) Bill 2014

1. Introduce Productivity and Innovation Credit Plus (PIC+) scheme to support qualifying Small and Medium Enterprises (SMEs)

Feedback: Regulation 8 applies to a person who qualifies for PIC+ for YAs 2017 and 2018, having failed the qualifying conditions stated in regulation 2(2) (ie (i) the person carries on a trade, profession or business in Singapore in the basis period for the specified YA, and (ii) the person meets the condition for employment size or annual turnover) for YA 2016. Regulation 10 applies to a person who qualifies for PIC+ for only YA 2018, having failed the qualifying conditions for YA 2016 and YA 2017. The opening paragraphs of the proposed draft regulations 8 and 10 presuppose that a person has failed both conditions in regulation 2(2). Regulations 8(1) and 10(1) should be reworded to apply to persons who do not meet the employment size or annual turnover condition, but are carrying on a trade or business in the basis period relating to the specified YAs.

MOF's response: Accepted. Regulations 8(1) and 10(1) will be amended to clarify that they apply to persons who do not meet the employment size or annual turnover condition, but are carrying on a trade or business in the basis period relating to the specified YAs.

2. Allowing businesses to claim PIC benefits on training expenses incurred in respect of individuals under centralised hiring arrangements

Feedback: The proposed draft in section 14R(6) assumes that the "central hirer", in relation to a central hiring arrangement, is also the party that carries out Human Resources (HR) functions for the group of related parties. It also requires the HR functions be carried out by a single entity within the group. In commercial reality, the HR functions may be shared by multiple entities within the group (e.g. HR function is established by each business unit) and the entity that hires the individual may not necessarily be the entity that performs the HR function. It is proposed that the

definitions of “central hirer” and “central hiring arrangement” be amended to reflect the above commercial practices.

MOF’s response: Accepted with clarification. Under a centralised hiring arrangement, the employees are usually hired by a single entity and deployed to the related parties within the group. To address the feedback that the entity which hires the individual may not necessarily be the entity performing the HR functions, the two definitions will be amended to apply to the entity which performs the “hiring” function on behalf of other entities within the group.

3. Introduce measures to curb abuses of the PIC Scheme

Feedback: The proposed section 37ID(8), which states that “an arrangement is a PIC arrangement if the obtaining of a PIC cash payout, PIC bonus or PIC enhanced deduction, or a higher amount of a PIC cash payout, PIC bonus, or enhanced deduction was the purpose or one of the purposes of the arrangement” is too broad a definition as most arrangements involve obtaining enhanced tax deductions, PIC cash payout, or PIC bonus would be deemed abusive as long as it fulfills the conditions under section 371D(9). Section 37ID(8) should be amended such that the arrangement is a PIC arrangement only if the obtaining of the PIC benefits was the main purpose of the arrangement.

MOF’s response: Not accepted. The purpose of section 37ID(8) is to define the term “PIC arrangement” and abusive PIC arrangement is separately defined in section 37ID(9). Bona fide PIC arrangements would not fall under section 37ID(9).

4. Grant tax deduction for expenses incurred to comply with statutory and regulatory requirement

Feedback: The proposed wording of section 14X implies that a tax deduction will not be granted for statutory and regulatory expenses if a business has yet to produce any income.

MOF's response: Accepted. Section 14X will be amended to make it clear that although no income has been produced, statutory and regulatory expenses are deductible if the business has commenced.

5. Extend and refine section 19B Writing-Down Allowance (WDA) for Intellectual Property Rights (IPRs)

Feedback: The proposed amended definition for IPRs to exclude types of items that would not qualify for WDA under the categories of "copyright" and "trade secret or information that has commercial value" appears to be broad and wide-ranging. More specific guidance is needed as there is a wide range of customer information or "information on work processes" which may vary from business to business.

MOF's response: Accepted with clarification. In line with the definition of intellectual property by the World Intellectual Property Organization (WIPO) , IPRs must be creations out of intellectual activities. Customer information and work process documents are excluded as they are not creations of the mind but compilations acquired by companies for building customer relationships and for achieving greater ease and efficiency in operations. They are thus not of the same class as the IPRs stated in section 19B(11). Work process documents containing industrial information or techniques that will assist in the manufacturing or processing of goods or materials are not included in the exclusion list, as they relate to "know-how" and may continue to qualify for the WDA under section 19B in the proposed legislation.

Feedback: It is unclear whether the proposed definition in section 19B(11) will have retrospective effect, and there is uncertainty relating to WDA claimed on certain intellectual property rights in the past. In addition, the proposed amendment to section 19B(11) is applicable to all types of IPRs and is not in accordance with the 2014 Budget Speech announcement that an exclusionary list will be introduced to clarify the meaning of "information of commercial value".

MOF's response: Accepted with clarification. The proposed definition in section 19B(11) is to make explicit the existing policy intent underlying section 19B, which is to encourage the economic exploitation of confidential information that is of the same class or nature as the IPRs expressly listed in the existing definition. Customer

information and work process documents (excluding those relating to industrial know-how) are not considered to be of the same class or nature as the IPRs that section 19B seeks to incentivise. Therefore, in line with the existing policy intent, we have expressly excluded such customer information and work process documents from the definition of "copyrights" and "trade secrets and information of commercial value" under section 19B(11) so as to provide taxpayers with clarity.

6. Refine the Designated Unit Trust (DUT) Scheme

Feedback: The proposed section 10(20B) deems undistributed DUT income to be taxable in the hands of certain investors when the deeming provision is triggered. However, the distribution made by a DUT to a unit holder who is not a foreign investor will be deemed to be income of the unit holder under the provisions of section 10(20) and (20A). This results in a double taxation of the same DUT income.

MOF's response: Not accepted. There is no double taxation under the described scenario. Following the application of the deeming provision, the unit trust will cease its DUT status. Accordingly, the subsequent distributions made by the unit trust to a unit holder who is not a foreign investor will not be brought to tax under section 10(20) and (20A) as these provisions are only applicable to distributions by a DUT.

7. Provide for tax treatment of Additional Tier 1 ("AT1") instruments

Feedback: Section 43N(4) and relevant Regulations should be amended to clarify that the definition of "debt securities" includes AT1 instruments. This would make clear that AT1 instruments can enjoy the concessionary tax treatment accorded to Qualifying Debt Securities (QDS), if all other QDS conditions are met.

MOF's response: Accepted. Amendments will be made to sections 13(16) and 43N(4) to make clear that AT1 instruments are regarded as debt securities and can enjoy the tax treatments accorded to debt securities in those sections and where applicable, other sections of the Income Tax Act (ITA), as long as the qualifying conditions for those treatments (if any) are met.

8. Providing remission powers for financial penalties

Feedback: Remission powers should be extended to the Comptroller of Income Tax to remit financial penalty under section 13CA in the same manner as the amendment made to section 37(18B) which enables the Comptroller to remit any financial penalty payable by a registered grant-making philanthropic organisation for contravening any regulation.

MOF's response: Accepted. Amendments will be made to sections 13CA and 13R tax concessions for funds managed by fund managers in Singapore to provide the Minister with the power to remit financial penalty imposed under those sections, subject to conditions. Each appeal for remission of penalty will be evaluated on its own merits.

9. Allow SRS members who qualify for the 50% tax concession to withdraw their SRS investments without liquidation of such investments

Feedback: As the SRS Operators need time to initiate changes to systems and sort out operational processes, the effective date of the change is proposed to be 1 July 2015.

MOF's response: Accepted. The effective date of this change will be revised from 1 January 2015 to 1 July 2015. The SRS Regulations will also be updated accordingly.

10. Enable the ratification of the Convention on Mutual Administrative Assistance in Tax Matters (Convention)

Feedback: The proposed wording "foreseeably relevant" in section 6 may be too general and may lead to a wider disclosure requirement than intended under the law. It is proposed to replace "foreseeably relevant" with either "reasonably relevant" or "directly relevant" to avoid a fishing expedition for information that is not reasonably or directly relevant to the tax administrations in foreign countries.

MOF's response: Not accepted. Section 6 is amended to allow IRAS to engage in Spontaneous Exchange of Information (EOI) under the Convention by sending

foreseeably relevant information to a receiving state once the Convention is ratified. No request of information to IRAS is involved and thus the term "fishing expedition" is not relevant. The term "foreseeably relevant" is widely understood as part of the internationally agreed EOI standard which Singapore has endorsed. IRAS' application of "foreseeable relevant" will remain guided by the requirements under the internationally agreed EOI standard.

11. Include new section 105MA to allow the Comptroller to address measures taken to circumvent FATCA reporting requirements

Feedback: The proposed anti-avoidance provision applying to a case where a person “enters into any arrangement” should be broadened to also cover situations where the person takes steps with a main purpose or one of the main purposes of avoiding FATCA reporting obligations.

MOF’s response: Accepted. A broader scope will be more effective in addressing measures taken to circumvent FATCA requirements. The phrase “takes any action” will be included to widen the scope of the provision.