

INCOME TAX (AMENDMENT) (EXCHANGE OF INFORMATION) BILL

(Roundup speech)

Mr Tharman Shanmugaratnam: Mr Speaker, Sir, I would like to thank Mr Liang Eng Hwa and Mdm Ho Geok Choo, both for their statements of perspective on the matter as well as their specific queries.

Let me first say that our decision to endorse and implement the new internationally agreed standard is a natural consequence of our long-standing policies. It is the right thing to do and it is in our interests to do so without delay. In fact, we announced our intention to endorse the Standard in February this year before the OECD had put out its listing of countries according to their compliance with the new Standard in April 2009.

OECD's grey listing

After the G20 London Summit in April this year, the OECD published a list of tax jurisdictions classified according to whether they had committed to the internationally agreed Standard and whether they had already substantially implemented it. White-listed countries were those that had already substantially implemented the Standard -- the benchmark being at least 12 signed agreements with others that incorporate the Standard. Grey-list jurisdictions were those that had already committed to the Standard, but had not substantially implemented it yet.

Singapore was on the grey list together with several other financial centres. However, as I have said earlier, we have since reached agreement with 20 jurisdictions to incorporate the Standard under our DTAs, and have formally signed 11 of these agreements. We are confident that we will formally conclude more than 12

agreements before the end of this year. Further, most of our agreements are with major economic jurisdictions, such as the United Kingdom, the Netherlands, Australia, New Zealand, Denmark and Norway. We have not treated this as a numbers game or sought to sign DTAs indiscriminately.

Protectionism and a level playing field

Mr Liang Eng Hwa was concerned, with good reason, that some countries would adopt protectionist moves under the guise of taking counter-measures against jurisdictions that they deem to have unfair tax systems. The diversity of fiscal and tax systems internationally, and competition between fiscal and tax systems internationally, is a strength of the world economy. It is entirely distinct from the need for concerted action to tackle the global problem of tax evasion or financial crimes. Tax diversity is a real positive for global economic growth. However, everyone knows that the fact that countries have diverse tax systems is something which can be easily politicised, and we have already seen this happen between countries which have a long history of differences on the matter.

As of this point, there is no indication of a descent into concrete protectionist measures. There is also no reason for any country to adopt protectionist measures against Singapore. We are a jurisdiction committed to international cooperation according to the internationally agreed Standard; we will soon meet, in fact, more than meet, the OECD target of 12 DTAs incorporating the new Standard.

It is also well-recognised internationally that Singapore is not a tax haven. We will not otherwise be having comprehensive DTAs with major countries - not merely Tax Information Exchange Agreements (TIEAs). The Tax Information Exchange

Agreements are concluded between countries which are unable to conclude comprehensive DTAs. We have not taken that route. We have instead stuck to comprehensive DTAs and incorporated the Standard within them. And we would not be able to do so with major economies if we were regarded as a tax haven. They regard us as a substantive and well-diversified economy, not a name-plate jurisdiction.

What we have always believed in is that the global issue of cross-border tax evasion has to be addressed through the rule of law and on the basis of a level-playing field internationally. As Mr Liang has pointed out, our move to adopt and implement the internationally agreed Standard for exchange of information is being taken together with other financial hubs such as Hong Kong and Switzerland, which are taking similar steps to enhance their respective tax cooperation regimes. A level playing field will be maintained.

Singapore - US DTA

Mr Liang Eng Hwa also asked whether Singapore's implementation of the internationally agreed Standard would pave the way for negotiations with the United States on a comprehensive DTA. We do think that such a DTA would be in the interest of both US and Singapore taxpayers, and would deepen the strategic relationship between the two countries. Both Singapore and the US are keen to explore a comprehensive DTA and I expect the process to get underway next year.

Technical aspects of the Bill

Mdm Ho Geok Choo had several specific questions on the Bill which I will now address. I will first address her question on Paragraph 8 of the new Eighth Schedule, which requires requesting countries to have pursued all means available in their own

territories to obtain the information they are requesting. Requests between countries must be made through their Competent Authorities as defined under the DTA between the two countries.

They may be made on behalf of other agencies that require the information for the enforcement of tax laws, such as the Justice Department or other relevant agencies. All of these agencies, and not just the Competent Authority, must have employed all legal means under the country's domestic laws to gather the relevant information before they can make a request to us. In fact, the internationally agreed Standard recognises that it is reasonable to expect a country to do this before it sends a request to another country.

With regard to Madam Ho's question on Paragraph 9 of the Eighth Schedule, the term "period" refers to how soon a requesting country wishes the request to be met. Madam Ho also asked whether the new section 105G would oblige other local tax authorities besides the Comptroller of Income Tax - in other words, the Comptroller of Goods and Services Tax and the Comptroller of Property Tax for instance - to actively gather information that they do not possess in order to fulfill a request. The Standard obliges us to cooperate on information exchange, regardless of the type of tax information. Section 105G(1) spells out that the Comptroller of Goods and Services Tax, the Comptroller of Property Tax and the Commissioner of Stamp Duties are only obliged to transmit information already in their possession to the Comptroller of Income Tax. For any other information not in their possession that is required to comply with the request, the Comptroller of Income Tax, himself, may directly obtain

the information, before transmitting all information requested to the foreign jurisdiction. These powers are provided for under section 105F(2).

Public interest vs public policy

Next, on the definition of "public interest", which was raised by Madam Ho. "Public interest" under the Act covers the same grounds as "public policy" as stated in the internationally agreed Standard. The internationally agreed Standard has the concept of "public policy" or what they call in French, *ordre public*. It covers especially national security interests, or sensitive information held in the vital interests of the requested country. We have used the term "public interest" only so as to be consistent with our Mutual Assistance for Criminal Matters Act (MACMA), which is an existing act. "Public interest" as used in the Act, does not depart in substance from what is envisaged under the internationally agreed Standard, under its public policy provision.

Fishing expeditions

Public interest, however, is unrelated to the rejection of requests that are not *bona fide*, or fishing expeditions. Such requests should be screened out in the first instance by the Eighth Schedule, which spells out very clearly the information that a requesting jurisdiction has to provide to IRAS when it makes its request. These requirements are intended to ensure that any request carries the necessary specificity and has clear relevance to the tax matter at hand. In addition, under section 105J(3)(a), the High Court has the power to reject unjustified requests.

Fishing expeditions can therefore be stopped at two levels – first by IRAS, then by the High Court if it relates to information protected under the Banking Act and Trust

Companies Act. This arrangement offers robust safeguards without compromising on the efficiency and responsiveness of our information exchange regime. It is in essence similar to the processes in other major jurisdictions such as the US and the UK, and is not aimed at stifling the effective exchange of information.

To answer Mr Liang Eng Hwa's query, IRAS, rather than other agencies will determine if a request is a fishing expedition. IRAS has substantial experience in handling foreign requests and tax administration, and will be competent in making an assessment of whether a request constitutes a fishing expedition.

Mr Liang rightly points out that it is important that information shared with the requesting authority does not fall into the wrong hands. The internationally agreed Standard recognises this as a key concern for many countries, and has hence made the confidentiality of any exchanged information a key tenet of the Standard. This is therefore explicitly spelt out in our DTAs which incorporate the Standard. Any information received by any jurisdiction in the course of processing or making a request shall be treated as secret in the same manner as information obtained under the domestic laws of that jurisdiction, and may only be disclosed to persons or authorities concerned with the assessment and collection of, enforcement or prosecution in respect of, determination of appeals in relation to the relevant taxes. Such persons and authorities shall use the information only for such purposes.

Legal privilege

Next, the question of legal privilege that was raised by Madam Ho. The protection of information subject to legal privilege is provided for under the internationally agreed Standard, and is spelt out in our DTAs which have legal effect under section 49

of the Income Tax Act. The Comptroller is not obliged under the DTAs to obtain or exchange information that is subject to legal privilege. There is no need to repeat this requirement in section 105J of the current Act. In addition, where a court order is served on a person, he is entitled to refuse to comply with the order insofar as he can claim legal privilege.

Madam Ho had also asked about sections 105K(3) and 105K(4)(b). Section 105K(3) provides that a person cannot refuse to comply with a court order because he is under a duty to protect the information. It is clearly subject to section 105K(4)(a) which preserves legal professional privilege. Other than legal privilege, a person served with the Court order cannot refuse to comply with it on any other grounds. So section 105K(4)(a) ensures that if you have legal professional privilege, that does provide basis for not being forced to provide the information to the Court.

Safeguards are consistent with the Standard

The safeguards I have described are perfectly consistent with the internationally agreed Standard, which makes it clear that high Standards of transparency and exchange of information must encompass respect for taxpayers' rights.

As Mr Liang has pointed out, our treaty partners must have the administrative practices and legal mechanisms to professionally carry out the effective exchange of information according to the Standard. Exchange of information under our DTAs is premised on reciprocity. We stand ready to provide the fullest cooperation on *bona fide* requests, but we are obliged, just like any other country which subscribes to the Standard, to draw a clear line should a requesting jurisdiction be abusing the new provisions.

Mr Speaker Sir, this Bill is about adhering to the principles we uphold. Trust, openness and the rule of law are the foundations upon which we have built up our financial centre, and indeed our broader economy as a whole. These principles and practices have served us well and will continue to support our efforts to further grow and develop our financial sector.