

# **SET-OFF OF CARRY-FORWARD LOSSES AND ALLOWANCES UNDER SECTIONS 37(5) AND 23(2) OF THE SINGAPORE INCOME TAX ACT - CIRCUMSTANCES UNDER WHICH A COMPANY SECRETARY'S CERTIFICATE MAY BE ACCEPTED IN LIEU OF AN EXTERNAL AUDITOR'S CERTIFICATE**

## **INTRODUCTION**

1. Under current tax provisions, losses incurred in any year by a company which carries on any trade or business can, subject to the provisions of section 37(5) of the Singapore Income Tax Act (SITA), normally be carried forward indefinitely and be available for set-off against any income derived by the company in subsequent years. Likewise, capital allowances which could not be fully deducted against income for any year of assessment may, subject to section 23(2) of the SITA, also be carried forward indefinitely unless the company ceases to carry on the trade or business for which the allowances fall to be made.
2. Sections 37(5) and 23(2) of the Singapore Income Tax Act (SITA) currently provide that any unutilised prior years' losses and capital allowances of the company can only be available for set-off against its income in any year if the Comptroller is also satisfied that there has been no substantial change in the ultimate shareholders of the company (commonly referred to as the shareholding test) on the dates specified in the above provisions (to be referred to as the relevant comparison dates hereafter). Where there is a substantial change in the shareholders of the company on the relevant comparison dates, the losses and capital allowances carried forward shall henceforth be disregarded unless the Minister for Finance decides to waive the shareholding test by virtue of section 37(8) and 23 (2A) of the SITA. For purposes of sections 37(5) and 23(2), the relevant comparison dates are as follows:

### **Losses**

The last day of the year in which the loss was incurred and the first day of the year of assessment in which the loss would be deductible against any income;

### **Capital allowances**

The last day of the year of assessment in which the capital allowances arose and the first day of the year of assessment in which the capital allowance would be set-off against any income.

3. The ultimate shareholders of a company are considered not to have substantially changed where 50% or more of the paid-up capital or, if the shares are not fully paid up, the nominal value of the allotted shares of the company is held by or on behalf of the same persons on the relevant comparison dates.
4. When administering the provisions of sections 37(5) and 23(2), the Comptroller may require an affected company (to be referred to as the "loss" company hereafter) to furnish an external auditor's certificate to substantiate that there has been no substantial change in its ultimate shareholders on the relevant comparison dates. Alternatively, the "loss"

company can also, in lieu of furnishing the requisite external auditor's certificate, provide a list of its ultimate shareholders and their respective shareholdings as at the relevant comparison dates to show that they have remained substantially the same.

5. Where the "loss" company or its ultimate parent company is a public listed company (PLC) whose shares are actively traded on a recognised Stock Exchange (whether local or foreign), the Comptroller has in practice been prepared to allow the company to set-off the prior years' losses and capital allowances in any year if its external auditor can confirm that no merger or takeover of the PLC has taken place between the relevant comparison dates, both dates inclusive. This is in recognition of the problems likely faced by the PLC in furnishing the external auditor's certification referred to in paragraph 4 due to difficulties in identifying its beneficial shareholders as a result of active trading in its shares on the Stock Exchange.
6. As part of its continuing effort to streamline and simplify administrative procedures for taxpayers, IRAS has recently reviewed the above administrative practice and decided that a company secretary's certificate may be accepted in lieu of an external auditor's certificate under certain circumstances for purposes of sections 37(5) and 23(2) of the SITA.
7. This Practice Note is intended to spell out the circumstances under which a company secretary's certificate may be accepted by the Comptroller.

#### **ADMINISTRATIVE STATEMENT**

8. It has been decided that where a "loss" company or its ultimate parent company is a PLC whose shares are actively traded on a recognised Stock Exchange (whether local or foreign), a certificate from the company secretary of the PLC confirming that no merger or takeover of the company has taken place between the relevant comparison dates (both dates inclusive) may be accepted by the Comptroller for the purposes of sections 37(5) and 23(2) of the SITA.
9. The above change in practice, which takes effect immediately, is however not extended to non-PLCs. This is because such companies generally should not experience serious difficulties providing a list of the shareholders and their respective shareholdings on the relevant comparison dates to satisfy the Comptroller that there has, in fact, been no substantial change in their ultimate shareholders on those dates.
10. Companies which have any enquiries concerning the above change in practice may call our Taxpayer Services Division for clarification.