

Summary of Responses – Public Consultation on Proposed Mergers and Acquisitions Scheme

A public consultation exercise was held between 2nd and 23rd June 2010 to seek feedback on the proposed Mergers and Acquisitions scheme (“M&A scheme”) announced by the Minister for Finance in Budget 2010.

IRAS received comments from 10 respondents on the public consultation paper during the consultation period. IRAS wishes to thank all respondents for their comments.

IRAS and MOF have considered carefully all the comments received. Based on these comments, IRAS and MOF have further fine-tuned the M&A scheme.

A summary of the key suggestions accepted for implementation and our comments are as follows-

A. Allow acquisition conducted through a Special Purpose Vehicle (“SPV”) by a holding company

Comment: Paragraph 4.2(b) of the consultation paper states that an acquiring company must carry on a trade or business as at the date of the M&A. It is suggested that this condition be removed as it is not unusual for acquiring companies to form a SPV to carry out an acquisition. The reason for doing so is to isolate risk involved in an M&A and shield the holding company from inherent risks in the M&A.

MOF/ IRAS’ comment: To make the M&A scheme more relevant to the commercial needs of Singapore-based companies conducting M&As, direct acquisitions that are carried out through a SPV (“acquiring subsidiary”) of a holding company would qualify for the M&A scheme on the basis that the acquiring subsidiary is not able to meet the qualifying conditions of the M&A scheme on its own. The M&A allowance would be allowed to the immediate holding company of the acquiring subsidiary if the immediate holding company is able to meet the qualifying conditions. This is provided for in the new Section 37L of the Income Tax Act.

B. Allow the conditions for a target company to be fulfilled by a subsidiary

Comment: Paragraph 4.2(e) of the consultation paper requires a target company to carry on a trade or business in Singapore or elsewhere as at the date of M&A and has at least 3 employees working for the company for at least 12 months preceding the date of M&A. This condition may not be met as it is

common for businesses to acquire the special purpose vehicle holding the target company as the seller may prefer to sell the SPV holding the shares of the operating company.

MOF/ IRAS' comment: The conditions above ensure that the target company has economic substance. However, to make the M&A scheme relevant to the more prevalent commercial manner of acquiring a target, the above conditions may now be met either by the target company or a subsidiary that is wholly and directly owned by the target company. This is provided for in the new Section 37L of the Income Tax Act.

C. Registered business trust that acquires the shares of a target company

Comment: The definition of “Singapore company” means a company which is incorporated in Singapore and resident in Singapore. This definition does not appear to include a business trust registered under the Business Trusts Act (Cap. 31A) but for taxation purposes, a registered business trust is treated as a company. Hence, the definition should include a registered business trust.

MOF/ IRAS' comment: A registered business trust that acquires the shares of a target company would be eligible for the M&A scheme. The modification of conditions under the M&A scheme to a registered business trust will be prescribed in the Regulations.

D. Abusive Tax Practices

Comment: Section 33 of the Income Tax is the appropriate tool to deal with the potential abusive tax practices as outlined in Paragraph 11 of the consultation paper. It is therefore not necessary to introduce new provision to deal with such abusive tax practices in connection with M&A transaction.

MOF/ IRAS' comment: Agreed.

E. Valuation Report

Comment: Paragraph 12.2 requires an independent valuation to support an M&A tax allowance claim where an acquiring company issues shares as consideration. The requirement for an independent valuation should be waived for an acquisition below a certain threshold.

MOF/ IRAS' comment: Agreed. Details of the threshold and other documents that may be requested by IRAS in place of the independent valuation will be provided in IRAS's e-Tax guide on the M&A scheme.

F. Extend the stamp duty relief to listed shares

Comment: Paragraph 3.5 of the consultation paper states that the stamp duty relief is granted to the acquiring company for the acquisition of unlisted ordinary shares. In rare situation, some shareholders may hold the scrip shares of companies listed on Singapore Exchange. It is not clear whether this type of shares would be considered unlisted ordinary shares and therefore qualifies for stamp duty relief under the M&A scheme.

MOF/ IRAS' comment: Stamp duty relief will also apply to acquisition of ordinary shares in companies listed on Singapore Exchange, including any ordinary shares held in physical scrip by their shareholders.