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(34th Edition)

BY

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PREFACE TO 34TH EDITION

The 2015 Budget introduced several income tax changes. Among them, companies will qualify for a 30% tax rebate for Years of Assessment (YAs) 2016 and 2017, but subject to a lower cap of $20,000 for each YA. Resident individuals qualify for a 50% tax rebate for YA 2015 subject to a cap of $1,000 and, from YA 2017, a revised, more progressive tax rate structure (with a top tax rate of 22%) will apply to their chargeable income. Approved donations made during the year 2015 will qualify for a 300% tax deduction, and the 250% tax deduction for approved donations has been extended for another three years from 1 January 2016 to 31 December 2018.

As in past Budgets, the 2015 Budget also announced changes to existing tax incentives and introduced new schemes to ensure that the tax regime helps Singapore remain competitive in key sectors and initiatives. Various tax incentives have been refined, enhanced or extended and some incentives have expiry dates introduced to ensure that they are reviewed periodically to assess their relevance. For example, the Mergers & Acquisitions scheme and Angel Investors Tax Deduction scheme have been enhanced and extended; the tax incentive for the writing down allowance scheme on capital expenditure incurred in acquiring an indefeasible right to use any international telecommunications submarine cable system will now expire on 31 December 2020 unless extended upon review.

To continue the support for internationalisation efforts, the Double Tax Deduction for Internationalisation scheme will be enhanced by allowing double tax deduction for qualifying manpower expenses capped at $1m per approved entity per year subject to conditions. IE Singapore will also release details of a new incentive, the International Growth scheme, which aims to provide greater and targeted support to Singapore companies in their growth overseas.

On 9 December 2014, Singapore signed the Inter-Governmental Model 1 (IGA1) with the US in order to facilitate the compliance by foreign financial institutions in Singapore with the US *Foreign Account Tax Compliance Act* (FATCA). Under the IGA1, information will be exchanged directly between the relevant Singapore and US government agencies. As a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes, Singapore has also decided to implement the OECD Automatic Exchange of Information standard by 2018 (conditions apply).

Several tax cases have been decided and reported since the last edition. They include *BLP v CIT*, in which the High Court ruled on the issue whether money that a management corporation raised from its members, the subsidiary proprietors, for the purpose of retrofitting and upgrading the common property, was revenue or capital. In *BFC v CIT*, the Court of Appeal ruled that the discounts and the redemption premium in question were not deductible for income tax purposes.

For reason of brevity, the masculine pronoun is used throughout. There is no intention of biasness towards any particular gender.

We welcome any comments on how the book may be improved.

The law is stated as at 10 March 2015.

Tan How Teck

Jimmy Oei

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ABBREVIATIONS

3PL	Third Party Logistics Company
A&E	Adolphus & Ellis
AA	annual allowance
AB	Appeals Board
ABI	Approved Bond Intermediaries
AC	Law Reports (Appeal Cases) from 1891
ACAP	Assisted Compliance Assurance Programme
ACJ	Acting Chief Justice
ACLC	Australian Company Law Cases (CCH Australia), from 1982
ACMT	Approved Contract Manufacturer and Trader
ACRA	Accounting and Corporate Regulatory Authority
ACT	Approved Cyber Trader
ACTR	Australian Capital Territory Reports
ACU	Asian Currency Unit
ADPPF	approved designated pension or provident fund
ADT	Approved Derivative Trader
AFM	Approved Fund Manager
AIDS	Acquired Immune Deficiency Syndrome
AIR	All India Reports
AIS	Approved International Shipping
AITR	Australian Income Tax Reports
ALJR	Australian Law Journal Reports
All ER	All England Law Reports, from 1936
All ER Rep	All England Law Reports Reprint, 1558–1935
ALR	Australian Law Reports
ALS	Aircraft Leasing Scheme
AMCS	Approved Marine Customer Scheme
App Cas	Appeal Cases
Art	Article(s)
ASIE	approved ship investment enterprise
ASIM	approved ship investment manager
ASK	Assisted Self-Help Kit
ASL	Approved Shipping and Logistics
AT1	Additional Tier 1
ATC	Australian Tax Cases (CCH), from 1969/approved trustee company
ATD	Australian Tax Decisions, from 1930–1969
ATR	Australian Tax Review
AV	annual value
AW	Additional Wages
BA	balancing allowance
BC	balancing charge
BCA	Building and Construction Authority

BCLC	Butterworths Company Law Cases
BM	Bond Market
BTC	British Tax Cases (CCH), from 1982
BTS	Block Transfer Scheme
BWS	Bonded Warehouse Scheme
C of IT or CIT	Comptroller of Income Tax (Singapore)
C of LR	Collector of Land Revenue
C of PT	Comptroller of Property Tax (Singapore)
C of T or CT	Commissioner of Taxation
CA	Court of Appeal/capital allowances
Can TC	Canadian Tax Cases
CAP	Compliance Assurance Programme
Cap	Chapter
CB	Common Bench
CD	Certificate of Deposits
CDP	Central Depository (Pte) Limited
CDT	commodity derivatives trading
CEEBR	Company Employee Equity-based Remuneration Scheme
CFS	Credit Facilities Syndication
CG of IR	Comptroller General of Inland Revenue
CGST	Comptroller of Goods and Services Tax
Ch	Law Reports, Chancery Division, from 1891 (England)
Ch App	Chancery Appeal
Ch D	Law Reports, Chancery Division, 1875–1890 (England)
CIAA	concessionary investment allowance account
CIF	cost, insurance and freight
CIR	Inland Revenue Commissioners
CJ	Chief Justice
cl	clause(s)
CLC	Company Law Cases (CCH Australia), from 1977–1981
CLJ	Current Law Journal
CLR	Commonwealth Law Reports, from 1904 (Australia)
COE	certificate of entitlement
Commr of IR (NZ)	Commissioner of Inland Revenue (New Zealand)
CPF	Central Provident Fund
CSA	cost-sharing agreement
CSOP	Company Stock Option Plan
DBS	Development Bank of Singapore
DEI	development and expansion incentive
DFC of T	Deputy Federal Commissioner of Taxation (Australia)
DGIR	Director General of Inland Revenue (Malaysia)

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DJ	District Judge
Div	Division(s)
DLR	Dominion Law Reports (Canada)
DM	Derivatives Market
DSC	Design Singapore Council
DTA	double taxation agreement
DTC	Dominion Tax Cases (CCH Canada), from 1920
DTR	double tax relief
ECI	estimated chargeable income
ECMI	Equity Capital Market Intermediary
Ed	edition
EDB	Economic Development Board
EE	energy efficiency
EEBR	Employee Equity-based Remuneration
EEIA	Economic Expansion Incentives (Relief from Income Tax) Act
EER	Employee Equity-based Remuneration
EESOP	Entrepreneurial Employee Stock Option Plan
EHC	eligible holding company
EM	Equity Market
ER	English Reports (1220–1865)
ERIS	Equity Remuneration Incentive Scheme
ERP	Electronic Road Pricing
ESOP	Employee Stock Option Plan
ESOS	Employee Stock Option scheme
ESOW	Employee Share Ownership
ET	enhanced-tier
FB	Federal Board
FC	Federal Court (Malaysia)
FC of T	Federal Commissioner of Taxation (Australia)
FFA	Forward Freight Agreement
FIFO	first in, first out
FIHC	family-owned investment holding company
FJ	Federal Judge (Australia)
FLR	Federal Law Reports (Australia)
FOB	free on board
FRS	Financial Reporting Standard
FSI	Financial Sector Incentive
FSR	Fleet Street Patent Law Reports
FTC	Finance and Treasury Centre/foreign tax credit
GIRO	general interbank recurring order
GPR	Gross Plot Ratio
GST	goods and services tax
GTP	Global Trader Programme
H&N	Hurlstone & Norman's Reports, Exchequer (1856–1862)
HC	High Court

HCR	handicapped child relief
HDB	Housing & Development Board
HIs	hybrid instruments
HKTC	Hong Kong Tax Cases
HLC	House of Lords Cases (1846–1866)
HMIT	Her Majesty's Inspector of Taxes
HQ	headquarter
HTR	higher tax rate
IA	industrial allowance/initial allowance/investment allowance
IBA	industrial building allowances
ICPAS	Institute of Certified Public Accountants of Singapore
IE Singapore	International Enterprise Singapore
IF	Islamic Finance
IGDS	Import GST Deferment Scheme
IGS	International Growth Scheme
IHQ	International Headquarters
IIA	Integrated Investment Allowance
IICA	integrated industrial capital allowances
IMC	International Maritime Centre
INT FRS	Interpretation of Financial Reporting Standard
IP	intellectual property
IPC	institutions of a public character
IPRs	intellectual property rights
IPRCs	intellectual property registration costs
IR Commrs or IRC	Inland Revenue Commissioners (Britain)
IRAS	Inland Revenue Authority of Singapore
IRS	interest rate swap
IRU	Indefeasible Right of Use
ITE	Institute of Technical Education
ITR	Industrial Tribunal Reports
J; JJ	Justice; Justices
JA; JJA	Justice of Appeal; Justices of Appeal
JC	Judicial Commissioner
JTC	Jurong Town Corporation
KB	Law Reports, King's Bench Division, from 1891 (England)
LGR	Local Government Reports
LIA	land intensification allowance
LJ	Law Journal, New Series, from 1831
LJ Ch	Law Journal Reports, Chancery (England)
LJ Ex	Law Journal Exchequer
LJ; LJJ	Lord Justice; Lord Justices
LJCP	Law Journal, Common Pleas, 1831–1875
LJQB	Law Journal Reports, Queen's Bench

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LLP	limited liability partnership
LNC	Local Network Company
LP	limited partnership
LR	The English "Law Reports" from 1865
LT	Law Times Reports, 1859–1947
LTR	lower tax rate
M&A	merger and acquisition
MAS	Monetary Authority of Singapore
MC	medical certificate
MDE	Media and Digital Entertainment
MES	Major Exporters Scheme
MFI	Maritime Finance Incentive
MFT	Marine Fuel Trader
ML	Maritime leasing
MLJ	Malayan Law Journal
MNR	Minister of National Revenue
MOM	Ministry of Manpower
MPA	Maritime and Port Authority of Singapore
MR	Master of the Rolls
MRO	maintenance, repair and overhaul
MSI	Maritime Sector Incentive
MSTC	Malaysia and Singapore Tax Cases
MTJ	Malaysian Tax Journal
NAV	net annual value
NCD	negotiable certificates of deposit
NIAA	normal investment allowance account
NLEs	Non-legal entities
NOR	Not Ordinarily Resident
NPO	not-for-profit organisation
NSmen	national servicemen
NSW	New South Wales
NSWLR	New South Wales Law Reports
NZLR	New Zealand Law Reports, from 1883
NZTBR	New Zealand Taxation Board of Review Decisions
NZTC	New Zealand Tax Cases (CCH), from 1973
O	Order
O&M	operation and maintenance
OCBC	Oversea-Chinese Banking Corporation
OECD	Organisation for Economic Co-operation and Development
OHQ	Operational Headquarters
OMV	Open Market Value
OTC	over-the-counter
OW	Ordinary Wages
P	Probate
P&L	profit and loss
PAE	prescribed automation equipment

para	paragraph(s)
PC	Privy Council
PE	permanent establishment
PF	project finance
PIC	Productivity and Innovation Credit
PLAT	prescribed locally administered trust
PMBS	Portable Medical Benefits Scheme
PNGLR	Papua New Guinea Law Reports
p(p)	page(s)
PPP	Public Private Partnership
Pt	Part
PUB	Public Utilities Board
QAC	Quality Assurance Certificate
QB	Law Reports, Queen's Bench Division, from 1875 (England)/qualifying base
QBD	Queen's Bench Division
QC	Queen's Counsel
QCR	qualifying child relief
Qd R	Queensland Reports, from 1958
QDS	qualifying debt securities
QPC	Qualifying Processing Services Company
QPDS	Qualifying Project Debt Securities
QWN	Queensland Law Reporter and Weekly Notes, from 1908
r	rule(s)
R&D	research and development
R&McG	Ratcliffe & McGrath's Australian Income Tax Decisions (2 vols., 1891–1927, 1928–1930)
R&R	renovation or refurbishment
R (Ct Sess)	Rettie, Court of Session Cases (Scotland)
RBT	Registered Business Trust
RC	receipt
REIT	real estate investment trust
RDA	R&D Tax Allowance
reg	regulation(s)
RHQ	regional headquarters
RISE	R&D Incentive for Start-Up Enterprise
RO	representative office
ROE	residue of expenditure
RRC	Ryde's Rating Cases
s	section(s)
SAS	Share Award Scheme
SASR	South Australian State Reports
SATC	South African Tax Cases
SB	Singapore Board
SC	Supreme Court

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Sch	Schedule(s)
SCJ	Supreme Court Judge
SCS	Subordinate Courts of Singapore
SEP	self-employed person
SETR	Singapore effective tax rate
SICOM	Singapore Commodity Exchange Limited
SGX	Singapore Exchange
Skin	Skinner
SLR	Singapore Law Reports
SLT	Scottish Law Times, from 1893
SMEs	small and medium enterprises
Sp Commrs	Special Commissioners (Malaysia)
SPC	special purpose company
SPTC	Singapore Property Tax Cases
SPV	special purpose vehicle
SR Eq	State Reports, Cases in Equity
SR (NSW)	State Reports, New South Wales
SR (Q)	Queensland State Reports, from 1902
SRS	Supplementary Retirement Scheme/Singapore Registry of Ships
SSS	Shipping-related support services
ST	standard-tier
STC	Simon's Tax Cases (England), by LexisNexis
St R Qd	State Reports Queensland, 1902–1957
Tas LR	Tasmanian Law Reports
TBP	trade, business or profession
TBRD	Taxation Board of Review Decisions (Australia)
TC	Tax Cases, from 1875 (England)
TDS	tax deducted at source
TLR	The Times Law Reports, from 1884
TMIS	Transferable Medical Insurance Scheme
TOP	Temporary Occupation Permit
TR	Taxation Reports, from 1939 (England)
TRS	Tourist Refund Scheme
TW	Total Wages
TWDV	tax written-down value
UAE	United Arab Emirates
UK	United Kingdom
UOB	United Overseas Bank
URA	Urban Redevelopment Authority
US	United States/United States Supreme Court Reports
USA	United States of America
VAT	value-added tax
VCD	video compact disc
VLR	Victorian Law Reports, from 1875
Vol	Volume
VR	Victorian Reports, 1870–1872

VRB	Valuation Review Board (Singapore)
WDA	writing-down allowances/Workforce Development Agency
WALR	Western Australian Law Reports
WHT	withholding tax
WITS	Work Improvement Teams
WLR	Weekly Law Reports, from 1953 (England)
WMCR	working mother's child relief
WN	Weekly Notes, 1866–1952 (England)
WN (NSW)	Weekly Notes, from 1884 (New South Wales)
WSQ	Workforce Skills Qualification
YA	year of assessment

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CHAPTER 1

INTRODUCTION TO SINGAPORE INCOME TAXATION

¶1-000 Introduction

This chapter is an introduction to income tax in Singapore. It outlines the scope of taxes administered by the Inland Revenue Authority of Singapore (IRAS), and sets out some general rules of statutory interpretation with particular reference ro income tax laws.

The primary objective of taxing income is to raise revenue. Revenue is needed for financing public expenditure such as defence, education and national development. Income taxation is also used to achieve socio-economic objectives. Singapore has introduced several tax incentives to foster the growth of certain industries.

Income tax rates are progressive for individuals resident in Singapore. The progressive rate structure is premised on the economic principle of "ability to pay". Singapore's corporate tax rate is 17% from the year of assessment (YA) 2010, which is low by international standards. A lower corporate tax rate may apply under certain tax incentives.

¶1-100 Legislative framework of income taxation

Under the *Singapore Constitution*, no tax or rate shall be levied by, or for the purpose of, Singapore except by or under the authority of law. Tax is therefore wholly a creature of statute.

In Singapore, income tax is imposed by the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act"). Income tax was first imposed for YA 1948.

The Act was based on the *Model Colonial Territories Income Tax Ordinance, 1922*, which was devised for British colonies at that time. Hence, Singapore's tax laws share common historical roots with those of Malaysia, Australia, New Zealand and South

Africa. Tax cases of these countries may therefore be of persuasive value in interpreting the Singapore Act where the provisions are similar.

The *Economic Expansion Incentives (Relief from Income Tax) Act (Cap 86, 2005 Revised Ed)* (the "EEIA") is also relevant to income taxation. The EEIA offers tax incentives to encourage the growth of targeted industries or activities. Unless the EEIA provisions expressly provide otherwise, the EEIA is to be construed as one with the Act.

Subsidiary legislation

Subsidiary legislation is made pursuant to provisions of the Act. It often sets out the details of schemes and arrangements authorised under those provisions.

Tax treaties

An example of subsidiary legislation in income tax law is the avoidance of double taxation agreement (commonly referred to as tax treaty or comprehensive tax treaty). Under s 49(1) of the Act, the Minister for Finance may declare a comprehensive tax treaty entered into with a foreign government to have effect "notwithstanding anything in any written law" (but see ¶1-430 on the purposive approach in Singapore).

There are 76 bilateral tax treaties in force as at 22 December 2014. With the advent of globalisation, cross-border transactions have become more common and complex. Income from such transactions may be subject to double taxation as countries apply different rules for taxing it. Tax treaties enhance international investment and trade by providing for the avoidance of such double taxation and by clarifying the application of domestic tax rules in a cross-border scenario. To prevent taxpayers from exploiting the differences in tax rules between or among countries, tax treaties also provide for the avoidance of fiscal evasion. This may be achieved through provisions on exchange of information.

International transport agreements

As at 22 December 2014, Singapore has eight agreements that are limited in scope, covering only income from international transport. The agreements with the United States of America (USA), Hong Kong and Brazil provide for tax exemption on international air transport and shipping income. The agreements with the United Arab Emirates (UAE), Saudi Arabia, Bahrain and Oman provide for tax exemption on international air transport income. The agreement with Chile provides for tax exemption on international shipping income. In all these agreements, the exemption is reciprocal. In the case of Bahrain, the limited tax treaty supplements the items not covered under the comprehensive tax treaty with Singapore.

Agreements signed but not ratified

As at 22 December 2014, Singapore has signed several new or revised tax treaties (eg with Rwanda, Seychelles and the UAE). These treaties will enter into force after they have been ratified.

Exchange of information agreement

Singapore concluded an exchange of information agreement with Bermuda on 29 October 2012.

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Income tax regulations, rules, orders and notifications

Income tax regulations, rules, orders and notifications are other examples of subsidiary legislation. Many regulations set out the details of tax incentives in the Act; an example would be the regulations governing concessionary tax treatment for an approved headquarters company under s 43E.

The Minister for Finance may make rules generally to give effect to the provisions of the Act (except those relating to appeals to the High Court) (s 7); an example is the rules relating to automation equipment for purposes of capital allowances. Notifications include those relating to the partial or full exemption of tax under s 13(4) on interest income arising on loans that promote Singapore's economic or technological development.

¶1-200 Income tax administration

The IRAS administers and enforces the collection of income tax, goods and services tax (GST), and various other taxes. The Commissioner of Inland Revenue is the Chief Executive Officer of the IRAS. The Commissioner's statutory appointments include:

- the Comptroller of Income Tax (the "Comptroller")
- the Comptroller of Goods and Services Tax
- the Comptroller of Property Tax, and
- the Commissioner of Stamp Duties.

As the appointments suggest, income tax, GST, property tax and stamp duties are under the purview of the IRAS. The IRAS also administers sweepstake and betting duties.

Section 4(3) confers on the Comptroller the responsibility for the assessment and collection of income tax. To enable the Comptroller to fulfil his duties and responsibilities, the Act confers on him extensive powers. The Comptroller is assisted by Deputy Comptrollers, Assistant Comptrollers and tax officers.

Official secrecy

The Act requires any person having an official duty or employed in administering the Act and the EEIA to make declarations of official secrecy (s 6(1)). Confidentiality is observed in respect of all documents, information and returns relating to the income or items of income of any person.

However, there are circumstances under which the obligation to official secrecy is waived. They include the following:

(a) where the disclosure is necessary:

  (i) for the purpose of carrying into effect the provisions of the Act

  (ii) to institute a prosecution, or

  (iii) in the course of a prosecution for any income tax offence,

(b) where the disclosure is made to authorised officers of other governments (pursuant to double taxation agreements or exchange of information agreements that Singapore has concluded with them) (s 6(4) and Pt XXA), and

(c) where the disclosure is made to the Comptroller of Property Tax, the Comptroller of Goods and Services Tax, the Chief Executive Officer of the Central Provident Fund Board, the Chief Assessor, the Commissioner of Stamp Duties or the Auditor-General.

Advance ruling system

An advance ruling system came into place from 1 January 2006. A ruling obtained from the IRAS under this system is binding on the IRAS to apply the statutory provisions in the manner set out in the ruling. Details on the system can be found at ¶17-460.

(Prior to 1 January 2006, it was also possible for a taxpayer to obtain a ruling from the IRAS on the interpretation of certain provisions of the Act and the tax effects of certain transactions. These rulings did not bind the courts. However, they were useful as they represented the IRAS' views on the matter before it.)

Interpretation and Practice Notes

The IRAS first issued Interpretation and Practice Notes in 1993. These Interpretation and Practice Notes are available as e-Tax Guides at www.iras.gov.sg. They do not bind the courts; rather, they set out the IRAS interpretation of certain provisions of the tax law and the IRAS administrative practices.

¶1-300 Tax jurisdiction

Income is liable to tax in a country only if it is within the country's income tax net or tax jurisdiction. Each country is free to determine how wide a tax net it wishes to cast. In practice, however, this freedom to tax may be limited by considerations such as whether the tax that is lawfully imposed on the income concerned is collectible.

In Singapore, under the charging section of the Act (s 10), tax is imposed on income "accruing in or derived from Singapore or received in Singapore from outside Singapore" unless an exemption applies. Section 10 contains the two limbs of Singapore's basis of taxation. First, income "accruing in or derived from Singapore", ie income that has a source in Singapore, is subject to tax in Singapore. Second, "income received in Singapore from outside Singapore", ie income having a source outside Singapore and received in Singapore, is also subject to tax. However, some exemptions may apply to Singapore-sourced income and to the receipt of foreign-sourced income in Singapore. For example, a non-resident individual is exempt from all foreign income received in Singapore.

STATUTORY INTERPRETATION

¶1-400 Statutory interpretation

Interpretation Act

The *Interpretation Act (Cap 1, 2002 Revised Ed)* is an important Act as it serves to interpret other Acts including the *Income Tax Act*. Section 2 of the *Interpretation Act* contains the definitions of a list of words and phrases that may appear in any Act and provides that those definitions are to apply unless the context in which the words or

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phrases appear otherwise requires. Section 9A of the *Interpretation Act* also enshrines the purposive approach to interpretation in Singapore: in interpreting a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) is to be preferred to an interpretation that would not promote that purpose or object (see ¶1-430).

Doctrine of precedent

Common law countries including Singapore adopt the doctrine of *stare decisis*, or judicial precedent. Under the doctrine, case law binds courts in the same hierarchy but is only persuasive in another hierarchy. In the same hierarchy, where the governing law and the facts of a case are materially the same, the rulings of higher courts are binding on the lower courts. This means that the lower courts are required to adopt the same reasoning and arrive at the same decision as the higher courts.

Ratio decidendi

The *ratio decidendi* of a case refers to the material facts and decision in the case.

In the absence of local precedent, where the statutory provisions concerned are similar, the courts in one jurisdiction may draw upon the principles laid down by a court in another jurisdiction.

Obiter dicta

This refers to the judge's opinion on and interpretation of points outside the immediate issue before him. It is a "saying by the way" and is usually delivered by way of illustration. The part of a judgment that is *obiter dicta* (by contrast with the ratio) does not have the authority of a formal decision of the Court and is not binding. It may, however, be respected according to the eminence of the Court and the circumstances in which it was made.

We now examine some rules of, and aids to, statutory interpretation.

¶1-410 Rules

Although commonly described as rules, the following are better regarded as general aids to interpretation.

The literal rule

Under the literal rule (also known as the plain-meaning rule), the ordinary meaning of the words is to be used where there is no ambiguity. If there is nothing to qualify or modify the language used in the statute, the literal rule requires that the words are to be construed using their ordinary meaning.

The golden rule

Under the golden rule, an Act of Parliament is to be read in a way so as to avoid a result of manifest absurdity or injustice. The golden rule allows the Court to depart from the *prima facie* meaning of the words of a statute and adopt a construction that would give a reasonable result.

The mischief rule

Under the mischief rule, the Court looks at how the law stood before the statute to be construed was passed and the mischief that the statute was intended to remedy. The statute is then interpreted in such a way as to give effect to that remedy.

Ejusdem generis ("of the same kind, class or nature")

Under this rule, a general word that follows particular and specific words which form a genus takes its meaning from them and is presumed to be restricted to the same genus as those words. This rule is a special application of the maxim *noscitur a sociis*.

For example, a statute might contain the expression "in any temple, church, mosque, synagogue or other premises". In this expression, the words "other premises" would be read more narrowly to mean a place of religious worship.

Noscitur a sociis ("it is known from its associates")

This rule means that words are known by the company they keep. Where the meaning of a word is in doubt, the words with which it is associated in the provision will assist in its interpretation. The meaning of a word or phrase in a statute can thus be ascertained from the context.

Expressio unius est exclusio alterius ("express mention of one thing is the exclusion of another")

This rule is also known as the "negative implication" rule: the express mention of one thing in the legislation excludes another.

¶1-430 Extrinsic aids

Besides the above aids, there are extrinsic and intrinsic aids (materials) to assist in interpreting the provisions of a written law.

Section 9A of the *Interpretation Act* makes particular reference to the use of extrinsic materials and is therefore set out in detail below.

Section 9A(1) of the *Interpretation Act* (as mentioned in ¶1-400) embodies the purposive approach to interpretation in Singapore. Section 9A(2) of the *Interpretation Act* provides that, where any extrinsic material is capable of assisting in ascertaining the meaning of a provision of a written law, consideration should also be given to that material:

(a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law, or

(b) to ascertain the meaning of the provision when:

  (i) the provision is ambiguous or obscure, or

  (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law leads to a result that is manifestly absurd or unreasonable.

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Section 9(3) of the *Interpretation Act* also lists the following as examples of extrinsic materials that may be considered:

(a) all matters not forming part of the written law that are set out in the document containing the text of the written law as printed by the Government Printer

(b) any explanatory statement relating to the Bill containing the provision

(c) the speech made in Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in Parliament

(d) any relevant material in any official record of debates in Parliament

(e) any treaty or other international agreement that is referred to in the written law, and

(f) any document that is declared by the written law to be a relevant document for the purposes of this section.

Section 9(4) of the *Interpretation Act* states that, in determining whether consideration should be given to any extrinsic material or in determining the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to:

(a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law, and

(b) the need to avoid prolonging legal or other proceedings without compensating advantage.

¶1-440 Intrinsic aids

Intrinsic aids are aids found in an Act itself. They include the long and short titles, punctuation, headings, Parts and Schedules.

Title

The long title is usually only explanatory. The long title of the *Income Tax Act* is "An Act to impose a tax upon incomes and to regulate the collection thereof".

Punctuation

The old local non-tax case *Palaniapah Chetty v Lim Poh* (1888) 4 Ky 435 would suggest that punctuation and capital letters are material to the meaning of the terms in an Act.

Marginal notes

Marginal notes are a concise indication of the subject matter of a specific section or a summary of its contents. The local non-tax case *Re Tan Keng Tin* [1923] MLJ 134 confirmed that marginal notes are part of an Act and may be referred to for assistance in interpretation.

Heading

A heading is not to be used to change the meaning of a section. Where the meaning of a section is not clear or has two or more possible meanings, the heading may be used as a guide to interpretation.

Parts

The *Interpretation Act* provides that the courts may take into account the subdivisions (or Parts) of an Act (s 6, *Interpretation Act*):

> "When an Act is divided into Parts, Chapters, titles or other subdivisions, the fact and particulars of such division shall, with or without express mention thereof in the Act, be taken notice of in all courts and for all purposes whatsoever."

Schedules

Every schedule to an Act is, together with any note thereto, to be construed and have effect as part of the Act (s 5, *Interpretation Act*).

¶1-500 Structure of the *Income Tax Act*

The Act consists of 23 Parts and 8 Schedules as shown in Tables 1 and 2.

Table 1: Parts of the Act

Part	*Title*
Pt I	Preliminary
Pt II	Administration
Pt III	Imposition of income tax
Pt IV	Exemption from income tax
Pt V	Deductions against income
Pt VI	Capital allowances
Pt VII	Ascertainment of certain income
Pt VIII	Ascertainment of statutory income
Pt IX	Ascertainment of assessable income
Pt X	Ascertainment of chargeable income and personal reliefs
Pt XI	Rates of tax
Pt XII	Deduction of tax at source
Pt XIII	Allowances for tax charged
Pt XIV	Relief against double taxation
Pt XV	Persons chargeable
Pt XVI	Returns
Pt XVII	Assessments and objections
Pt XVIII	Appeals
Pt XIX	Collection, recovery and repayment of tax
Pt XX	Offences and penalties
Pt XXA	Exchange of information under avoidance of double taxation arrangements and exchange of information arrangements
Pt XXB	International agreements to improve tax compliance
Pt XXI	Miscellaneous

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Table 2: Schedules of the Act

Schedule	*Contents*
First Schedule	Institution, authority, person or fund exempted
Second Schedule	Rates of tax
Third Schedule	(Repealed)
Fourth Schedule	Name of bond, securities, stock or fund
Fifth Schedule	Child relief
Sixth Schedule	Number of years of working life of asset
Seventh Schedule	Advance rulings
Eighth Schedule	Information to be included in a request for information under Pt XXA

¶1-600 Rules in relation to taxing Acts

Old United Kingdom (UK) tax cases would support the following general rules (propositions) in interpreting tax laws:

- The subject is not to be taxed unless the words of the statute clearly impose a tax on him.
- There is no equity in taxation. This means that there is no room for equitable consideration in construing a taxing statute. A taxpayer is either caught by a taxing provision or he is not.
- If the meaning of the words in a statute is ambiguous, the taxpayer will be given the benefit of the doubt.

These rules must now be read in light of the purposive approach in Singapore that is enshrined in s 9A of the *Interpretation Act*.

CHAPTER 2

BASIC TAX CONCEPTS

¶2-100 Tax jurisdiction

Income tax, as the name implies, is a tax on income. Before any income is liable to tax in a country, it must fall within the country's tax net. The extent of each country's tax net is determined by the country's tax legislation. It is a generally accepted principle of international tax law that every country has the right to levy tax if there is a reasonable nexus or link between the country and the taxpayer, property or transaction it seeks to tax.

Broadly speaking, there are two tax systems; namely, the "worldwide" and the "pure territorial" tax systems. Under the worldwide tax system, a country would tax its residents on all their income arising anywhere in the world. Countries such as the United States of America (USA) extend the worldwide system even to their citizens who are not tax residents. Under a pure territorial tax system, a jurisdiction (such as Hong Kong) would tax only income sourced within that jurisdiction. Some countries, such as Singapore, tax foreign-sourced income only if it is received in the country.

Under Singapore's charging provision, s 10 of the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act"), unless an exemption applies, tax is imposed on the income of any person:

- accruing in or derived from Singapore, or
- received in Singapore from outside Singapore.

Such a tax system is sometimes described as "territorial" (as it taxes also remittances of income), to distinguish it from the "pure territorial" system.

¶2-200 Tax entities

The concept of "Hindu joint family" was removed from the Act with effect from year of assessment (YA) 2013. Some consequential tax changes resulted from this removal.

From YA 2013, the definition of the term "person" includes a company and a body of persons (s 2). A "body of persons" means "any body politic, corporate or collegiate, any corporation sole and any fraternity, fellowship or society of persons whether corporate or not corporate but does not include a company or a partnership" (s 2).

The following tax entities are subject to tax on their income falling within s 10(1):

- an individual
- a Hindu joint family (up to YA 2012 only)
- a company incorporated or registered in Singapore or elsewhere
- a trustee
- an executor
- a club
- an association, and
- a registered business trust (taxation is in the name of the trustee-manager).

A partnership is specifically excluded from the definition of a "body of persons" in s 2(1) and is therefore not a tax entity. Partners are taxed, either in their own capacity as individuals or as corporate partners, on their respective shares of the partnership income. Similarly, a sole proprietor is taxed in his own personal capacity on the profits from the business. A limited liability partnership (LLP) is legally a body corporate but is treated as a partnership for income tax purposes. This means that each partner of an LLP will be chargeable with tax on his share of the income from the LLP.

¶2-300 Income — Statutory, assessable and chargeable

The word "income" is not defined in the Act. The charging s 10, examined in Chapter 3 (at ¶3-100ff), categorises income into six different heads of charge, namely:

- income from trade, business, profession or vocation
- employment income
- dividends, interest or discounts
- pension, charge or annuity
- rents, royalties, premiums and any other profits arising from property, and
- any other gains or profits of an income nature not falling within any of the above heads of charge.

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A person is allowed to deduct qualifying expenses incurred in the production of the income. Where a person carries on a trade, business or profession (TBP), he can claim capital allowances (CAs) on capital expenditure incurred on the provision of plant or machinery for the purposes of that TBP. Various conditions apply. Deductions and CAs are discussed in Chapter 7 (at ¶7-100ff) and Chapter 8 (at ¶8-100ff) respectively.

Income tax is imposed at applicable tax rates (see ¶2-700) on the chargeable income of a person.

The statutory income of a person for any YA is the aggregate of his income from each source for the year preceding the YA. Statutory income, which would include foreign income received in Singapore but exclude exempt income, is arrived at after deducting expenses allowable against each source of income and applicable CAs.

Assessable income (s 37(1)) is the remainder of statutory income after deducting:

(i) any loss incurred in any trade, business, profession or vocation, and

(ii) approved donations.

A person's chargeable income for any YA is defined as the remainder of his assessable income after reliefs and deductions allowed in Pt X of the Act (s 38). As these reliefs and deductions (see Chapter 12 at ¶12-100ff) are available only to individuals resident in Singapore, the chargeable income of a company would, technically, equal its assessable income.

¶2-410 Basis of assessment

The statutory tax year for which income tax is calculated and charged is known as the *year of assessment* (YA). Each YA begins on 1 January and ends on 31 December. For example, YA 2015 refers to the period 1 January 2015 to 31 December 2015.

On the other hand, the "basis period" for a YA means "the period on the profits of which tax for that year falls to be assessed" (s 2(1)).

Preceding year basis

Singapore adopts the *preceding year basis of taxation* for all sources of income (s 35(1)). The income to be brought to tax for YA 2015 is therefore the income accruing in or derived from Singapore or received in Singapore from outside Singapore for the basis period 1 January 2014 to 31 December 2014.

The **preceding calendar year basis** is applied for all income derived by an individual, including income from trade, business, profession or vocation. The **preceding accounting year basis** of taxation applies, however, to any source of trade, business, profession or vocation in respect of which the individual's accounts are made up to a date other than 31 December.

Example 1

Mr Ho has total income of $54,000 from employment and rental for the period 1 January 2014 to 31 December 2014.

The income of $54,000 ("statutory income") will be assessable for YA 2015.

The following paragraphs explain how the accounting year basis is applied.

Accounting year basis

A person whose accounts are made up to a date other than 31 December is required to adopt the preceding accounting year as the basis period. For example, the profits of the accounting year ended 30 November 2014 are taxed for YA 2015.

Where the accounting year basis is to be adopted in determining a person's statutory income, the following rules will apply with effect from YA 2009 (s 35(4)):

(a) For individuals, the accounting year basis shall apply only to the statutory income from any trade, business, profession or vocation carried out in sole proprietorships or in partnerships. Income from other sources such as employment and rent is assessed under the preceding calendar year basis.

Example 2

Mr Wong is the sole proprietor of an electronics retail business and he owns two residential properties that are rented out. The financial year-end of his business is 31 January. His statutory income for YA 2015 will comprise:

(i) taxable income from his business for the year ended 31 January 2014, and

(ii) net rental income for the year 1 January 2014 to 31 December 2014.

(b) For companies and bodies of persons (eg clubs, charities, associations, etc), the accounting year basis shall apply to the statutory income of that person from *all* sources.

Example 3

Twinkle-Bright Pte Ltd prepares its annual accounts from 1 April to 31 March each year.

The basis period for YA 2015 will be the 12-month period from 1 April 2013 to 31 March 2014. Trade income and non-trade income earned during this period will be regarded as income assessable for YA 2015.

¶2-500 Change of accounting date

A person can change the accounting date of his existing TBP if he so desires. No prior approval is required from the Comptroller of Income Tax (the "Comptroller"). The change may be a result of a re-organisation, the acquisition of another company that has a different accounting date, a management decision, or any other commercial reason. In some cases, the change may be motivated for tax reasons, ie in an attempt to obtain a tax advantage. For example, in order to qualify for the loss-transfer system of group relief, companies are, as a condition, required to adopt the same accounting date (see Chapter 9 at ¶9-100ff).

Where there is a change of accounting date, the Comptroller has discretionary powers to compute the income of the related YAs as he thinks fit (s 35(6)).

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The Comptroller's discretion to compute the statutory income is confined to three YAs:

(i) the YA in which the taxpayer fails to make up its accounts to the usual accounting date (the so-called "failure" year), and

(ii) the following two YAs.

Examples 4 and 5 explain how the Comptroller would generally exercise his discretion in a scenario where a post-1968 TBP adopts a change of accounting date (different considerations govern a pre-1969 trade because the preceding year basis of assessment took effect only from 1969). Note that there is no "fall out" or double taxation of profits as the total profits made over the period of change would be equal to the total profits brought to charge.

Example 4

Lowkey Ltd commenced trading on 1 January 1997 and makes up its accounts to 30 September. In 2014, it changed its accounting date to 31 December and prepared the 15-month accounts to 31 December 2014.

Note that the failure year is 2014, the year Lowkey fails to make its accounts to its usual date, ie 30 September 2014. The Comptroller has the discretion to determine the basis period and the statutory income for the failure year, ie YA 2014, and the following two YAs, ie YA 2015 and YA 2016.

The basis periods for the relevant YAs could be determined under two alternatives:

YA	*Alternative 1 Basis period*	*Alternative 2 Basis period*
2014 (failure year)	1 October 2012 to 30 September 2013 (12 months)	1 October 2012 to 30 September 2013 (12 months)
2015	1 October 2013 to 31 December 2014 (15 months)	1 October 2013 to 30 September 2014 (12 months)
2016	1 January 2015 to 31 December 2015 (12 months)	1 October 2014 to 31 December 2015 (15 months)

In this example, the Comptroller would need to exercise his discretion to determine the basis periods for YA 2015 and YA 2016. Observe that the profits for the period 1 October 2014 to 31 December 2014 could be assessed in either YA 2015 or YA 2016. If he is satisfied that the change was not tax-motivated, he may adopt Alternative 1 in determining the basis periods for YA 2015 and YA 2016. However, if he is of the opinion that the change was made to obtain a tax advantage (eg if the tax rate for YA 2016 is higher than that for YA 2015), he has the power to adopt Alternative 2.

Example 5

Hifi Ltd commenced business on 1 April 1997 and prepares accounts to 31 December. In 2014, the company decided to change its accounting date from 31 December to 31 July and prepared its seven-month accounts to 31 July 2014.

The basis periods for the following YAs could be determined under two alternatives:

YA	Alternative 1 Basis period	Alternative 2 Basis period
2014 (failure year)	1 January 2013 to 31 December 2013 (12 months)	1 January 2013 to 31 December 2013 (12 months)
2015	1 January 2014 to 31 July 2014 (7 months)	1 January 2014 to 31 December 2014 (12 months)
2016	1 August 2014 to 31 July 2015 (12 months)	1 January 2015 to 31 July 2015 (7 months)

The Comptroller may adopt Alternative 1 in determining the basis periods for YA 2015 and YA 2016 if he is satisfied that the change was not tax-motivated. However, if he is of the opinion that the change was made to obtain a tax advantage (eg if the tax rate for YA 2016 is lower than that for YA 2015), he has the power to adopt Alternative 2.

RESIDENCE

¶2-600 Residence

A person can be resident or non-resident for tax purposes. The definition of "resident in Singapore" for individuals, companies and body of persons is given in s 2. The residency status of a person for each YA may have an impact on its income tax liability and obligations. The tax treatment may differ depending on the residency status, eg applicable tax rates, the exemption of income and the availability of personal reliefs and foreign tax credits. These are further discussed in Chapter 12 (at ¶12-100ff) on Taxation of Resident Individuals and Chapter 13 (at ¶13-100ff) on Taxation of Non-residents.

¶2-610 Residence of an individual

"Residence" can have a different meaning depending on the context in which it is used. In relation to an individual, residence is usually taken to mean the place where he normally lives and sleeps, where he carries on business or employment and where he is to be found daily. Residence for tax purposes, however, does not solely depend on where one is born, where one is domiciled, what one's nationality is or the place one calls home.

For income tax purposes, the notion of residence is distinct and separate from that for other purposes. For instance, an individual may be a permanent resident of Singapore under the immigration rules, but he may or may not be a tax resident in Singapore.

Under s 2(1) of the Act, "resident in Singapore"—

> "(a) in relation to an individual, means a person who, in the year preceding the year of assessment, resides in Singapore except for such temporary absences therefrom as may be reasonable and not inconsistent with a claim by such person to be resident in Singapore, and includes a person who is physically present or who exercises an employment (other than as a director of a company) in Singapore for 183 days or more during the year preceding the year of assessment."

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When determining the residency status of an individual for any YA, one must look at his personal circumstances in the year preceding the YA. There is no statutory provision in Singapore for treating an individual as a tax resident for part of a year and a non-resident for the remaining part of a year. This means that an individual will either be resident or non-resident for the whole YA.

From the definition of "resident in Singapore", the first test is qualitative.

An individual is resident in Singapore for a YA if, in the year preceding the YA, he resides in Singapore except for such temporary absences from Singapore as may be reasonable and not inconsistent with his claim to be resident in Singapore.

The second test, which is an alternative test for residence, is a quantitative one that consists of two "sub-tests":

(i) the duration of physical presence (ie stay) in Singapore is $\geq$ 183 days in the calendar year preceding the YA concerned, and

(ii) the duration of employment (but not as a company director) exercised in Singapore is $\geq$ 183 days in the calendar year preceding the YA concerned.

If either of these sub-tests is satisfied, the individual will be resident for that YA.

Qualitative test

The meaning of the terms "resides" and "temporary absences" found in the qualitative test are now examined.

"resides"

The term "resides" is not statutorily defined. The ordinary meaning of "reside", as defined in the *Oxford English Dictionary*, is:

> "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place."

This definition was quoted with approval by Viscount *Cave* in *Levene v IRC* (1928) 13 TC 486.

Determining the residency status of an individual is essentially a question of fact. The following factors are relevant:

(a) whether the individual has family ties in Singapore

(b) whether the individual has accommodation available to him in Singapore

(c) whether the individual is in Singapore or abroad for a temporary purpose

(d) whether the individual has set up a permanent home in Singapore or abroad, and

(e) the frequency, regularity and duration of visits to Singapore and the purpose of such visits.

"temporary absences"

An individual can qualify as resident in Singapore even though he may be away from Singapore during the whole year, part of the year, or even a few years. This is provided that the individual's absences from Singapore are considered as "temporary" and are reasonable and not inconsistent with the claim that he is resident in Singapore.

Absence from Singapore generally should not be with a view or intent to establish a residence abroad. For example, if an employee went to New York on a permanent transfer and took up a permanent position there, the employee's absences from Singapore would not satisfy the proviso above.

The term "temporary absences" does not necessarily mean a shorter duration abroad as compared to the presence of the individual in Singapore. Whether an absence for an extended period may be regarded as "temporary" would depend on the purpose behind the absence (*Re Young* 1 TC 57). Duration of the absence is also a relevant consideration. In *Federal Commissioner of Taxation v Applegate* 79 ATC 4307, the Court considered that it is a matter of degree and suggested that an absence over a period of 10 years could not reasonably be regarded as a temporary absence.

In *Rogers v IRC* (1879) 1 TC 225, a seaman working abroad over the entire duration of a tax year, but whose family remained in the United Kingdom (UK), was taxed on a resident basis. The Court said:

> " . . . The circumstance that Captain Rogers has been absent from the country during the whole year to which the assessment applies does not seem to me to be a specialty of the least consequence. That is a mere accident. He is not a bit the less a resident in Great Britain because the exigencies of his business have happened to carry him away for a somewhat longer time than usual during this particular voyage."

Example 6

Ronald Lee, a Singaporean who has lived and worked in Singapore all his life, was seconded to his company's head office in New York for the period 1 June 2014 to 30 November 2016. During that 30-month period, Lee returned to Singapore twice for holidays, each time for five days.

Under the qualitative test, Lee will be resident in Singapore for YA 2015 to YA 2017 (inclusive).

Quantitative test

The quantitative test is an alternative tesr of residence for individuals who do not qualify as resident under the qualitative test. Under the quantitative test, an individual who is physically present in Singapore or who exercises employment in Singapore (other than as a director of a company) for 183 days or more in the calendar year preceding the YA in Singapore is treated as resident for tax purposes. In calculating the 183-day limit, the 183 days need not be continuous, and presence in Singapore for any part of a day is counted as presence for one whole day (s 2(2)).

Example 7

(a) Professor Black is English and lives with her family in London and works at the University of London. She came to Singapore on 15 January 2015 as a visiting professor of a local university for a term of three months.

Prof Black will be regarded as not resident in Singapore for YA 2016.

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(b) In January 2015, John, an American, came to Singapore on a temporary assignment to work as a marketing executive of the Singapore branch of his US employer. The project is for a term of nine months.

As John will be present in Singapore for more than 183 days in 2015, he will be regarded as resident in Singapore for YA 2016.

A foreigner who is in Singapore from, say, 1 August 2015 to 20 June 2016 would not be treated as resident in Singapore for YA 2016 or YA 2017 as his stay in Singapore is less than 183 days in 2015 and 2016 respectively. It is therefore possible that two foreigners working in Singapore for the same period of time may have different residency status and consequently different tax liabilities in Singapore merely because they commenced their employment on different dates.

To remove any potential inequity, the Inland Revenue Authority of Singapore (IRAS) has implemented the following two-year administrative concession for foreigners working in Singapore.

Administrative concession for foreigners working in Singapore

The two-year concession applies to an individual who enters Singapore on or after 1 January 2007 and whose continuous stay (including work) in Singapore is at least 183 days straddling two calendar years. In such a situation, the individual will be regarded as resident for both YAs. This concession does not apply to a company director or public entertainer, and is more generous than the former three-year concession.

Under the three-year concession which applied to individuals entering Singapore before 1 January 2007, a foreigner who stayed or worked in Singapore continuously for three consecutive years would be treated as a resident for all the three years even if the number of days in Singapore was less than 183 days in the first and/or third year. For example, if the individual's employment in Singapore had spanned from 15 August 2005 to 31 March 2007, he would be regarded as resident in Singapore from YA 2006 to YA 2008 as a concession.

Example 8

(a) Charles, a foreigner, arrived in Singapore on 14 August 2014 and commenced employment on 15 August 2014. He ceased employment in Singapore on 15 September 2015.

Under the concession, he will be regarded as resident for both YAs 2015 and 2016. (If the quantitative test in s 2(1) is strictly followed, he would have been assessed as non-resident for YA 2015 and resident for YA 2016.)

(b) David, a foreigner, came to Singapore on 1 August 2014 and commenced employment with a local IT company on the same day. He completed his 20-month employment on 31 March 2016.

Under the concession, David will be regarded as resident for all three YAs 2015, 2016 and 2017.

The purpose of the IRAS concession is to reduce the individual's tax liability. If an individual finds that he is better off by paying less tax based on his residency status as determined under s 2(1), he need not avail himself of the concession.

Granting such a concession (ie treating the individual as a resident for all the YAs concerned) may result in an unintended reduction in the individual's tax liability for the first YA (to which the date of his arrival relates). This may occur, for example, when the individual left his job without serving the minimum period of 183 days straddling two calendar years. To ensure that the tax properly payable by him in these circumstances is collectible, the Comptroller may require the individual to furnish, at the outset, a letter of undertaking from his employer to guarantee the payment of the difference in tax payable between the resident and non-resident bases of assessment if he leaves Singapore without satisfying the 183-day condition.

Company directors

The definition of "employee" in s 2(1) includes a director of a company. However, the definition of "resident in Singapore" for an individual does not extend the duration of employment exercised in Singapore under the quantitative test to a director. A director is an executive director (also called working director) if he works for the company more or less full-time and is involved in the day-to-day management of the company. He is a non-executive director if his involvement with the company is limited to attendance at the meetings of the board of directors. The IRAS recognises this distinction and, as another concession, allows the "duration of employment" test of residence to be applied to an executive director. For a non-executive director, his residency status is established on the basis of the qualitative test or the physical presence test only.

¶2-620 Residence of a company

A company is "resident in Singapore" if the control and management of its business is exercised in Singapore (s 2(1)). The term "control and management" is not defined. Control and management does not mean the carrying on of the company's day-to-day business. Consequently, the locale of trading activities or physical operations is not necessarily the place where control and management is exercised.

In the UK, the corresponding test for corporate residence is "central management and control". Tax cases there have identified this with the governing body vested with the superior directing authority, ie policy-level decision-making powers. Such authority is typically vested in the company's board of directors under the company's constitution. The fact that shareholders have the power to remove directors is not relevant in this respect (but see exception of "controlling shareholder" below). In practical terms, superior directing authority includes the authority to decide such matters as:

(i) whether the company is to cease operations entirely

(ii) what the company's business will be

(iii) whether and when a dividend is to be declared, and

(iv) whether a merger or acquisition is to go ahead.

The location where the central management and control of a company is exercised is a question of fact to be determined by a scrutiny of the course of the business or trading (*De Beers Consolidated Mines Ltd v Howe* (1906) 5 TC 198).

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In *NB v CIT* [2006] SGITBR 2 (para 26), the Singapore Board of Review affirmed that there was no difference between the UK test of "central management and control" and the test of "control and management" in s 2(1).

As a general rule, therefore, a company is resident in Singapore if its board of directors holds its board meetings in Singapore, exercising the control and management of the company's business. In the rare situation, however, where the directors "stand aside" from their directorial duties such that the control and management of the company's business is in fact exercised by another body (eg a controlling shareholder), the superior directing authority will vest with that body instead. This situation may occur, eg where the board of directors effectively relinquishes its directorial functions by:

(i) not even holding any meetings in exercise of those functions, or

(ii) holding meetings but merely rubber-stamping the instructions that emanate from the parent company (in other words, without giving any independent input as a board into the decision-making process).

In determining the residence of a company for Singapore tax purposes, the country of incorporation does not matter. A foreign-incorporated company will be resident in Singapore if the control and management of its business is exercised in Singapore. Conversely, a Singapore-incorporated company will be non-resident if the control and management of its business is exercised outside Singapore.

A company may change its place of residence. It can be resident in Singapore for one YA and non-resident for another. The definition of "resident in Singapore", in relation to a company, omits the reference "the year preceding the year of assessment" found in the same s 2(1) definition in relation to an individual. It is therefore arguable that, unlike for an individual, the residency status of a company for any YA is determined by reference to the circumstances in the YA itself and not to those in the year preceding the YA. In practice, however, the IRAS looks at the year preceding the YA for determining corporate residence.

Unless an exemption applies, both resident and non-resident companies are subject to tax on income accruing in or derived from Singapore and foreign income received in Singapore. However, some tax consequences differ:

(i) only a Singapore resident company may pay an exempt one-tier dividend, while a non-resident company pays a foreign dividend (see Chapter 10 at ¶10-100ff)

(ii) only a Singapore resident company qualifies for tax treaty benefits, such as the reduction or exemprion of tax on income arising in the treaty country

(iii) only a Singapore residenr company qualifies for the foreign-sourced income exemption under s 13(8) (see Chapter 14 at ¶14-100ff)

(iv) certain types of income paid to a non-resident company (but not to a resident company) are subject to withholding tax (see Chapter 13 at ¶13-100ff), and

(v) only a Singapore resident company qualifies for the enhanced tax exemption for new companies (see ¶2-900).

¶2-700 Rates of tax

Resident individuals

Resident individuals are taxed at progressive tax rates set out in Pt A of the Second Schedule (s 42) (The concept of "Hindu joint family" was removed from the Act from YA 2013).

For YA 2012 to YA 2016, the first $20,000 of chargeable income is not taxable. The lowest and highest tax rates are 2% and 20% respectively.

For YA 2013, resident individuals qualify for a tax rebate as follows:

Age as at 31 December 2012	*Tax rebate*	*Rebate capped at*
< 60 years old	30%	$1,500
≥ 60 years old	50%	$1,500

2015 Budget announcement

For YA 2015, resident individuals qualify for a tax rebate of 50%, subject to a cap of $1,000.

To increase the progressivity of the personal income tax rate regime and strengthen future revenues, a revised tax rate structure (with a top tax rate of 22%) will apply from YA 2017.

¶2-940, ¶2-950 and ¶2-955 list the rates of tax for the different income bands.

Non-resident individuals

Non-resident individuals are subject to tax at a flat rate of 20% on Singapore-sourced income (eg rental income). However, under certain conditions, certain income such as interest and royalties may be subject to a final tax rate of 15%, 10% or a lower tax rate as provided for under the Act or tax treaties.

For Singapore-sourced employment income, relief is provided under s 40B. The non-resident individual is subject to tax on such income at a flat rate of 15% or at the resident rates with reliefs, whichever tax liability is the higher (see ¶13-130). Where a short-term visiting employee exercises an employment in Singapore for 60 days or less in the calendar year, however, he is tax-exempt on income derived from that employment for the YA concerned under s 13(6) (see ¶5-130).

Non-resident Singapore citizens with Singapore-sourced income are eligible for reliefs under s 40(1). The progressive rates set out in Pt C of the Second Schedule (see ¶2-960) are to be used to calculate the reliefs (see ¶13-110). The s 40(1) relief will be withdrawn from YA 2016.

Certain types of income withdrawn by or paid to non-resident individuals are also subject to withholding tax.

Companies resident in Singapore

From YA 2010, the corporate tax rate for companies resident in Singapore is 17%. The tax rate is applied on chargeable income after deducting an amount of income exempt under the partial tax exemption scheme. From YA 2008, the maximum amount of this exempt income is $152,500 (see ¶2-850).

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To encourage start-ups, qualifying new companies resident in Singapore are entitled to a maximum exemption of $200,000 of their normal chargeable income for the first three qualifying consecutive YAs (see ¶2-900).

From YA 2013 to YA 2015, companies qualify for a 30% tax rebate capped at $30,000 for each YA.

2015 Budget announcement

For YA 2016 and YA 2017, companies will qualify for a 30% tax rebate capped at $20,000 for each YA.

Historical note

Tax exempt cash grant for YA 2012

For YA 2012, a company may qualify for a tax exempt cash grant equal to the lower of:

(a) 5% of the gross amount of the income derived by the company from its principal activities in the basis period for YA 2012, or

(b) $5,000.

To qualify for this cash grant, a company must have made Central Provident Fund (CPF) contributions for at least one employee during the relevant accounting period for YA 2012. The employee must not be a shareholder of the company. The grant does not apply to dormant and inactive companies and to trusts (including real estate investment trusts).

A company will automatically receive the cash grant after the YA 2012 corporate tax return has been filed and tax assessed.

A registered business trust may also qualify for a tax exempt cash grant (subject to a similar cap as above) for YA 2012 if its trustee-manager has made CPF contributions for at least one employee during the relevant accounting period for YA 2012. Such an employee's sole duty must be to assist in managing or operating the trust and the employee must not also be a unit-holder of the trust (s 92C).

Corporate tax rate

Singapore's corporate tax rate has been decreasing over the years (see below):

Year of Assessment	*Tax rate*
From 2010 onwards	17%
2008 to 2009	18%
2005 to 2007	20%
2003 to 2004	22%
2002	24.5%
2001	25.5%
1997 to 2000	26%
1994 to 1996	27%
1993	30%
1991 to 1992	31%
1990	32%
1987 to 1989	33%
Up to 1986	40%

Non-resident companies

Non-resident companies are also subject to tax at 17% (from YA 2010) and may qualify for the partial tax exemption as well (conditions apply). The tax rate may be reduced for certain incomes (see Chapter 13 at ¶13-100ff).

Trustees and executors

Trustees (other than a trustee for an incapacitated person) and executors of estates are subject to tax at 17% from YA 2010.

Clubs and associations

From YA 2010, bodies of persons (such as clubs and associations) qualify for the partial tax exemption scheme (see ¶2-850) and are subject to tax at 17%. Up to YA 2009, such bodies of persons were not eligible for the partial tax exemption scheme and were subject to the progressive tax rates in Pt B of the Second Schedule (see ¶2-980).

¶2-800 Business entity

Businesses in Singapore can be carried out in one of the following forms:

- sole proprietorship
- partnership
- limited liability partnership (LLP)
- limited partnership (LP)
- company
- branch, and
- registered business trust (RBT).

Sole proprietorships and partnerships (not including LLPs) are not legal entities and are not separate tax entities for income tax purposes. The sole proprietors and individual partners will be taxed in their own personal capacity on the profits derived from such businesses. In a partnership where the partners are companies, the partnership income will be allocated to and taxed in the hands of the corporate partners.

An LLP is a body corporate (a separate legal entity) but is basically treated as a general partnership for income tax purposes. This means that the partners of an LLP will be taxed on their share of the income from the LLP (see ¶11-420).

An LP is an unincorporated body of persons. It is similar to a general partnership except that it consists of both limited and general partners. The income tax treatment of LPs is set out in Chapter 11 at ¶11-451.

The economic purpose, structure and operation of a RBT are similar to those of a company. For these reasons, the income tax treatment for a RBT is similar to that for a company (see ¶16-300 to ¶16-340).

Companies are legal entities and subject to tax on their profits in their own names. Foreign companies can do business in Singapore by incorporating a subsidiary or registering a branch. The choice of their vehicle of operation would depend on their level of activities in Singapore, tax and other considerations.

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Subsidiary vs branch

Both a subsidiary and a branch office of a foreign company in Singapore are subject to the same tax rate (17% from YA 2010) under the Act. However, the main differences are as follows:

- A subsidiary is a separate legal entity apart from its parent company. In practice, the control and management of the business of a subsidiary incorporated in Singapore is typically exercised in Singapore. If it is, such a subsidiary is resident in Singapore and can pay a Singapore exempt one-tier dividend and enjoy treaty benefits (see ¶2-620).
- As a Singapore branch is not a separate legal entity itself but is merely an extension of its foreign head office, in ascertaining the residency status of the branch, the "control and management" test is applied to the foreign company of which it is legally a part. In practice, a foreign company with a branch office in Singapore is typically non-resident for Singapore tax purposes on the basis that the management and control of the company's business is exercised outside Singapore. Unlike a subsidiary, a branch cannot legally pay a dividend. The Singapore branch may, however, repatriate its after-tax branch profits to the foreign head office without attracting any further tax liability in Singapore. This is because Singapore does not impose any withholding tax on the repatriation of branch profits back to the head office.

Permanent establishment

(a) PE in purely domestic scenario

The term "permanent establishment" (PE) is defined in s 2(1) to mean—

> "a fixed place where a business is wholly or partly carried on including—
>
> (a) a place of management;
>
> (b) a branch;
>
> (c) an office;
>
> (d) a factory;
>
> (e) a warehouse;
>
> (f) a workshop;
>
> (g) a farm or plantation;
>
> (h) a mine, oil well, quarry or other place of extraction of natural resources;
>
> (i) a building or work site or a construction, installation or assembly project,
>
> and without prejudice to the generality of the foregoing, a person shall be deemed to have a permanent establishment in Singapore if that person—
>
> (i) carries on supervisory activities in connection with a building or work site or a construction, installation or assembly project; or
>
> (ii) has another person acting on that person's behalf in Singapore who—
>
> (A) has and habitually exercises an authority to conclude contracts;

(B) maintains a stock of goods or merchandise for the purpose of delivery on behalf of that person; or

(C) habitually secures orders wholly or almost wholly for that person or for such other enterprises as are controlled by that person".

The PE concept is commonly mentioned in Singapore in the context of taxation of business income in relation to a non-resident person. In principle, it is submitted that the question whether or not a PE exists in Singapore is separate from the question whether the non-resident person derives business income in Singapore. To answer the latter question, we apply case principles, in particular, the operations test. Applying the operations test, we ask "What has the taxpayer done to earn the profit in question?", and then ask "Where has the taxpayer conducted those activities?".

In practice, because foreign companies are required by law to register their business in Singapore if they have a place of business or carry on business in Singapore, a non-resident company that derives business income in Singapore often has a PE (eg a branch or registered office) in Singapore as well. It should not be understood from this common occurrence that a PE must be present in Singapore as a condition for there to be a source of business income in Singapore.

In a purely domestic scenario (ie where the non-resident person is resident in a country with which Singapore does not have a tax treaty), the "PE" concept is important in that it is referred to in several important provisions of the Act. These provisions include:

(i) the deemed source rules of s 12(6), 12(6A), 12(7) and 12(7A) (see Chapter 13 at ¶13-100ff)

(ii) the "tax-rate" provisions of s 43(3) and 43(3A) (see Chapter 13 at ¶13-100ff), and

(iii) the unilateral tax relief provisions of s 50A(1) (see Chapter 14 at ¶14-100ff).

(b) PE in treaty-country scenario

Where the non-resident person (or "foreign enterprise" in treaty language) is resident in a treaty country, the tax treaty definition of PE should be examined as it may be (though broadly similar) wider or narrower than the s 2(1) definition.

In the typical treaty-country scenario (where the treaty is based on the OECD Model Treaty), the IRAS is allowed to tax the business profit of a non-resident person only to the extent that it is attributable to a PE in Singapore of the non-resident person. It is in this context that the PE represents a threshold level of business presence that must exist in order for the economic connections of the non-resident person to Singapore to be regarded as sufficiently close to allow the IRAS to tax the business profit (see Chapter 14 at ¶14-100ff).

Chargeability of agent of non-resident person

A non-resident person may be regarded as carrying on a business in Singapore if it trades on its own account or through an agent in Singapore. A non-resident person trading through a broker, a general commission agent or other agent who is an authorised person carrying on the regular agency of the non-resident person will be assessed on his income from sales or transactions carried out through such broker or agent in the name of the broker or agent (s 53(4)). A person resident in Singapore may be deemed to be an agent of the non-resident if, in the course of business between the

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resident person and the non-resident person and owing to the close connection between them and the substantial control exercised by the non-resident person over the resident person, either no profits or less than the ordinary profits from that business accrue to the resident person (s 53(2A)).

Representative office

Where the activities of a foreign company in Singapore are confined mainly to auxiliary or support services, the foreign company can register a representative office (RO) with the International Enterprise Singapore ("IE Singapore", formerly the Trade and Development Board). The RO is not permitted to carry on any trade or business in Singapore, sign any contracts or open any letters of credit directly or indirectly on behalf of its head office. A RO is not recognised as a legal entity under the Singapore *Companies Act (Cap 50, 2006 Ed)*.

The RO is essentially a cost centre and not a profit centre. Where the RO's activities are confined to services (eg liaison services, dissemination of market information, etc) rendered to the head office, related and/or associated companies in the Asia-Pacific region, the RO is normally not regarded as having derived taxable income in Singapore. However, the IRAS may impose tax based on a notional profit of 5% of the expenditure incurred by the RO in Singapore if the IRAS regards the activities rendered by the RO to its head office as sufficient to render a taxable presence in Singapore. The existence of a tax treaty may, however, exclude such taxation.

¶2-850 Partial tax exemption scheme

The partial tax exemption scheme was implemented to help small and medium companies remain competitive.

Tax exemption applies to the following income that is subject to the normal corporate tax rate (17% for YA 2010 onwards) (s 43(6)):

- 75% of the first $10,000 chargeable income (ie up to $7,500 exempt), and
- 50% of the next $290,000 chargeable income (ie up to $145,000 exempt).

The maximum amount of exempt income is therefore $152,500. The remaining income is then subject to the normal corporate tax rate. The effect of this scheme is that the effective corporate tax rate would be lower than the normal corporate tax rate.

The partial tax exemption does not apply to the following income:

- chargeable income that is subject to tax at a concessionary rate, and
- income earned by a non-resident company that is subject to a final withholding tax rate of 15% or 10%.

Example 9 shows how the partial tax exemption is applied to a company that has income subject to the 17% corporate tax rate. The application of the partial tax exemption scheme to a company that has incurred a trade loss, or to a company that is entitled to claim investment allowances, further deductions or deduction for approved donations is explained further in Chapter 9 (at ¶9-100ff).

Example 9

Company P, incorporated in 1997, has the following income for the year ended 31 December 2014:

	$
Trade income	450,000
Rental income	50,000
	500,000

The tax liability of Company P for YA 2015 would be:

	$	$
Trade income		450,000
Rental income		50,000
Income eligible for exemption		500,000
Less: Exempt income		
75% of 1st $10,000	7,500	
50% of next $290,000	145,000	152,500
Chargeable income		347,500
Tax assessed at 17%		59,075
Less: 30% tax rebate (capped at $30,000)		(17,722.50)
Net tax payable		41,352.50

¶2-900 Enhanced tax exemption scheme for new companies

An enhanced tax exemption scheme (also known as the **Start-Up Tax Exemption (SUTE) scheme**) was first announced in the 2004 Budget to enable new Singapore-incorporated companies to retain and plough more of their earnings back into their businesses.

Under the enhanced scheme, tax exemption applies to the following income that is subject to the normal corporate tax rate (17% for YA 2010 onwards) (s 43(6A)):

- 100% on the first $100,000 of chargeable income, and
- 50% on the next $200,000 of chargeable income.

The maximum exemption allowed under this scheme is therefore $200,000.

The tax exemption applies to the first three qualifying consecutive YAs. The first qualifying YA is the YA that relates to the basis period in which the company is incorporated.

From YA 2009, a new company (other than a company limited by guarantee) will qualify for the tax exemption if the following conditions are satisfied (s 43(10)):

(a) it must be incorporated in Singapore

(b) it must be resident in Singapore for that YA, and

(c) its total share capital must be beneficially held directly by no more than 20 shareholders:

   – all of whom are individuals throughout the basis period relating to that YA, or

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- at least one of whom is an individual holding at least 10% of the total number of issued ordinary shares of the company throughout the basis period relating to that YA.

Note that up to YA 2008, the enhanced tax exemption did not apply to new companies with corporate shareholders. The change to allow a new company with corporate shareholders to qualify for the enhanced tax exemption will also apply to existing companies still within the first three YAs of incorporation. For example, Company A, which is incorporated on 1 July 2006, has its first financial year ended on 30 June 2007. If Company A qualifies as an eligible new company with corporate shareholders, it will be eligible for the start-up exemption for YAs 2009 and 2010.

Companies limited by guarantee

From YA 2010, a company limited by guarantee is eligible for the tax exemption scheme, provided it satisfies the above conditions (a) and (b), and has members:

- all of whom are individuals throughout the basis period relating to that YA, or
- at least one of whom is an individual throughout the basis period relating to that YA, and the contribution by that individual under its Memorandum of Association to the assets of the company in the event of it being wound up, is at least 10% of the total contributions of the members of the company throughout the basis period for that YA.

Property developer companies and investment holding companies

The enhanced tax exemption is not applicable to the following companies which are incorporated on or after 26 February 2013:

(a) Property developer companies — companies that buy or lease land and arrange for a building to be built on the land in order to lease, manage or sell the building, and

(b) Investment holding companies — companies whose principal activity is that of investment holding and which derive only investment income such as rental, dividend or interest income.

The tax change reflects the policy that the enhanced tax exemption was not intended to apply to property developer companies, each of which is typically incorporated for a new property development, and to investment holding companies, which derive only passive sources of income. These companies will, however, continue to enjoy the partial tax exemption (s 43(11), 43(12) and 43(13)).

¶2-940 Tax rates applicable to resident individuals from YA 2007 up to YA 2011

(Part A of the Second Schedule)

Chargeable income	$		*Rate* %	*Gross tax payable* $
On the first	20,000		Nil	
On the next	10,000	@	3.5	350
On the first	30,000			350
On the next	10,000	@	5.5	550

Chargeable income	$		Rate %	Gross tax payable $
On the first	40,000			900
On the next	40,000	@	8.5	3,400
On the first	80,000			4,300
On the next	80,000	@	14	11,200
On the first	160,000			15,500
On the next	160,000	@	17	27,200
On the first	320,000			42,700
Income above	320,000	@	20	

The above tax rates also apply to Hindu joint families and an incapacitated individual resident in Singapore whose income is chargeable to tax in the hands of a court-appointed receiver, guardian, trustee or committee having the direction, control or management of property on the individual's behalf.

¶2-950 Tax rates applicable to resident individuals from YA 2012 to YA 2016

(Part A of the Second Schedule)

Chargeable income	$		Rate %	Gross tax payable $
On the first	20,000		Nil	
On the next	10,000	@	2	200
On the first	30,000			200
On the next	10,000	@	3.5	350
On the first	40,000			550
On the next	40,000	@	7	2,800
On the first	80,000			3,350
On the next	40,000	@	11.5	4,600
On the first	120,000			7,950
On the next	40,000	@	15	6,000
On the first	160,000			13,950
On the next	40,000	@	17	6,800
On the first	200,000			20,750
On the next	120,000	@	18	21,600
On the first	320,000			42,350
Income above	320,000	@	20	

The above tax rates also apply to Hindu joint families (for YA 2012 only) and an incapacitated individual resident in Singapore whose income is chargeable to tax in the hands of a court-appointed receiver, guardian, trustee or committee having the direction, control or management of property on the individual's behalf.

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For YA 2015, resident individuals qualify for a tax rebate of 50% capped at $1,000.

¶2-955 Tax rates applicable to resident individuals from YA 2017

Chargeable income	$		*Rate* %	*Gross tax payable* $
On the first	20,000		Nil	
On the next	10,000	@	2	200
On the first	30,000			200
On the next	10,000	@	3.5	350
On the first	40,000			350
On the next	40,000	@	7	2,800
On the first	80,000			3,350
On the next	40,000	@	11.5	4,600
On the first	120,000			7,950
On the next	40,000	@	15	6,000
On the first	160,000			13,950
On the next	40,000	@	18	7,200
On the first	200,000			21,150
On the next	40,000	@	19	7,600
On the first	240,000			28,750
On the next	40,000	@	19.5	7,800
On the first	280,000			36,550
On the next	40,000	@	50	8,000
On the first	320,000			44,550
In excess of	320,000	@	22	

¶2-960 Tax rates for calculation of s 40 tax relief for non-resident individuals

(Part C of the Second Schedule)

The following rates apply for computing the tax relief under s 40 for certain non-resident individuals:

Chargeable income	$		*Rate* %	*Gross tax payable* $
On the first	2,500	@	4	100
On the next	2,500	@	6	150
On the first	5,000			250
On the next	2,500	@	8	200
On the first	7,500			450
On the next	2,500	@	10	250
On the first	10,000			700
On the next	5,000	@	14	700

Chargeable income	$		*Rate* %	*Gross tax payable* $
On the first	15,000			1,400
On the next	5,000	@	16	800
On the first	20,000			2,200
On the next	5,000	@	17	850
On the first	25,000			3,050
On the next	10,000	@	20	2,000
On the first	35,000			5,050
On the next	15,000	@	27	4,050
On the first	50,000			9,100
On the next	50,000	@	34	17,000
On the first	100,000			26,100
Income above	100,000	@	37	

¶2-980 Tax rates for clubs and associations

From YA 2010, clubs and associations are subject to the normal corporate tax rate of 17% and are eligible for the partial tax exemption scheme. Part B of the Second Schedule was deleted with effect from 29 December 2009.

The following rates of tax under Pt B of the Second Schedule were applicable up to YA 2009:

Chargeable income	$		*Rate* %	*Gross tax payable* $
On the first	2,500	@	6	150
On the next	2,500	@	9	225
On the first	5,000			375
On the next	2,500	@	12	300
On the first	7,500			675
On the next	2,500	@	15	375
On the first	10,000			1,050
On the next	5,000	@	20	1,000
On the first	15,000			2,050
On the next	5,000	@	23	1,150
On the first	20,000			3,200
On the next	5,000	@	25	1,250
On the first	25,000			4,450
On the next	10,000	@	30	3,000
On the first	35,000			7,450
On the next	15,000	@	40	6,000
On the first	50,000			13,450
On the next	50,000	@	50	25,000
On the first	100,000			38,450
Income above	100,000	@	55	

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Note that up to YA 2009, the rate of tax applicable to the income of clubs and associations was limited to the effective corporate tax rate, if this was lower than the club's effective tax rate. The club's effective tax rate was determined by dividing the income tax payable based on the above Pt B rates by the amount of chargeable income. The effective corporate tax rate is further elaborated in Chapter 15 (at ¶15-100ff).

CHAPTER 3

THE CHARGING SECTION

¶3-100 Introduction

Singapore imposes tax on income (ie receipts of a revenue nature). There is no capital gains tax. Only income falls within the charging provisions of s 10(1) of the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act"). The term "income" is, however, not defined.

Section 10(1) provides that:

> "Income tax shall . . . be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in or derived from Singapore or received in Singapore from outside Singapore in respect of:
>
> (a) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;
>
> (b) gains or profits from any employment;
>
> (c) (Deleted by Act 29/65);
>
> (d) dividends, interest or discounts;
>
> (e) any pension, charge or annuity;
>
> (f) rents, royalties, premiums and any other profits arising from property; and
>
> (g) any gains or profits of an income nature not falling within any of the preceding paragraphs."

Where any income specified under s 10(1)(d) and (f) constitutes business income to the taxpayer, it will be assessable under s 10(1)(a). For example, interest income of a bank or financial insritution is assessable under s 10(1)(a). The tax consequences may differ, depending on whether s 10(1)(a) applies to the income (for details, see Chapters 4 at ¶4-100ff, 7 at ¶7-100ff, 8 at ¶8-100ff and 9 at ¶9-100ff).

Section 10(1) has two limbs:

(i) income accruing in or derived from Singapore, and

(ii) income received in Singapore from outside Singapore.

This chapter focuses on the charging section, specifically, the meaning of the expressions "accruing in or derived from" and "received in Singapore from outside

Singapore". Chapter 4 (at ¶4-100ff) examines the taxation of income under s 10(1)(a), Chapter 5 (at ¶5-110ff) examines employment income and pensions, and Chapter 6 (at ¶6-000ff) examines all other sources of income.

¶3-200 "Accruing in or derived from"

The term "derive" was held to have the same meaning as "accruing in" or "arising" in *CIR v Kirk* [1900] AC 588.

Territorial scope

Under s 10(1), Singapore has the right to tax the income if the source of the income is in Singapore. Foreign-sourced income is subject to tax in Singapore only if that income is received in Singapore and not exempt from tax.

Determining the source of an income is not always easy. In the Australian case *Nathan v FC of T* 25 CLR 183, *Isaac* J said that source is not a legal concept but something that a practical man would regard as a real source of income and that ascertaining the actual source is a practical hard matter of fact. In the South African case *CIR v Lever Bros & Unilever Ltd* (1946) 14 SATC 1, the judge said that " . . . the source of receipts received as income is not the quarter whence they come but the originating cause of their being received as income . . .". To determine this originating cause, two questions need to be asked:

(i) "What is the originating cause of the income?", and

(ii) "Is the originating cause located in the taxing jurisdiction?".

In *Smidth & Co v Greenwood* [1921] 3 KB 583, *Atkin* LJ formulated what became known as the "operations test":

> "The question is, where do the operations take place from which the profits in substance arise?"

The operations test was endorsed by the Privy Council in *CIR v Hang Seng Bank Limited* (1990) 1 HKRC ¶90-044; [1990] STC 739:

> "The broad guiding principle, attested by many authorities, is that one looks to see what the taxpayer has done to earn the profits in question. If he has rendered a service or engaged in an activity such as the manufacture of goods, the profit will have arisen or derived from the place where the service was rendered or the profit-making activity carried on. But if the profit was earned by the exploitation of property assets as by letting property, lending money or dealing in commodities or securities by buying and reselling at a profit, the profit will have arisen in or derived from the place where the property was let, the money was lent or the contracts of purchase and sale were effected."

When income is to be recognised

The expression "accruing in or derived from" also sets the point in time when the income sourced in Singapore is to be recognised for tax purposes. A person will not be liable for tax on his income unless that income has accrued to him. Income cannot be said to have accrued to a person unless he has an unfettered right to deal with it.

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This issue of when income would be realised (or earned) in the context of Singapore property developers was examined in two local cases:

(i) *MPD Pte Ltd v CIT* (1998) MSTC 5249, and

(ii) *KE v CIT* [2005] SGITBR 4.

MPD Pte Ltd v CIT (1998) MSTC 5249

In *MPD*, the taxpayer developed a private residential development for sale and the Comptroller of Income Tax (the "Comptroller") sought to tax the taxpayer in accordance with the percentage of completion method that the taxpayer had adopted in its accounts. Under this method, revenue is recognised as the contract activity progresses, ie costs incurred in reaching a particular stage of completion are matched with progress payments received at that point. The taxpayer appealed, submitting that the income which it had received in the form of progress payments had not been realised for the purposes of income tax. The Comptroller argued that the taxpayer was entitled to the progress payments from the purchase price that accrued to the taxpayer in the year they were paid or when they became payable. It was therefore contended that the percentage of completion method was an acceptable basis for tax purposes on incomes received. However, the Singapore Board of Review held that, given the various contingencies that the taxpayer may face and the severe statutory limitations imposed on the use of the funds received in the taxpayer's special project account, the taxpayer could not be deemed to have earned (ie derived) any income in respect of the development until the Temporary Occupation Permit (TOP) for such development was issued.

KE v CIT [2005] SGITBR 4

In *KE*, the taxpayer had sold all the units in its development before the date of issue of the TOP. It had adopted the completed contract method for both accounting and income tax reporting purposes. For the year of assessment (YA) 1999, it recognised 85% of the sales proceeds for all the units as its income and deducted against that income 85% of the costs of construction and allowable expenses (the "costs") incurred up to 30 June 1998 in relation to the development. For YA 2000, it recognised the remaining 15% of the sales proceeds as income and claimed deduction for the remaining 15% of the costs incurred up to 30 June 1998.

The Comptroller sought to tax the proceeds in the following manner: for YA 1999, on the basis that 85% of the sales proceeds was to be recognised as income and that 100% of the costs had been incurred and were to be deducted from the 85% proceeds; and for YA 2000, the remaining 15% of the sales proceeds was recognised as income and none of the costs were to be deducted from the 15% proceeds.

The two issues before the Board were:

(i) the amount of proceeds to be recognised as income for the relevant YAs (ie the income recognition issue), and

(ii) the deductibility of costs.

The Board ruled in the taxpayer's favour.

The Board held that only 85% and not 100% of the sales proceeds should be deemed to have accrued to the taxpayer at the TOP date and that the remaining 15% of the sales proceeds should be deemed to have accrued to the taxpayer only after the certificate of statutory completion for the units had been issued. The Board explained that *MPD* was not setting out a general principle that all the income from the development was to be treated as derived when the TOP was issued. It was merely stating that, in light of the contingencies and limitations on the use of the funds in the project account, no income could be derived until the issue of the TOP.

In *KE*, there were substantial contractual obligations (under the sale and purchase agreements entered into with the purchasers of the units) that the taxpayer had yet to perform as at the TOP date, such as full completion of all building works, obtaining the certificate of statutory completion with respect to the units, and the rectification of any defects. Under the agreements, the purchasers were to make progress payments to the taxpayer at various stages of construction such that the taxpayer would be entitled to receive 85% of the sales proceeds at the time the TOP was issued. The remaining 15% of the sales proceeds would be due and payable to the taxpayer only after YA 1999.

Meaning of "gains or profits"

The second issue in *KE* relating to the deductibility of costs is discussed here for completeness. The taxpayer's counsel contended that the term "gains or profits" in s 10(1)(a) meant "gross profits" after deducting only the costs of sales, and only then are the allowable expenses under s 14(1) deducted from such "gross profits" to arrive at the taxable "net profits" (see Chapter 7 on Deductions at ¶7-100ff). The Board rejected this contention. The Board took the view that the reason why the term "gains or profits" was included in s 10(1)(a), 10(1)(b) and 10(1)(g) but not in s 10(1)(d) and 10(1)(e) was that the former categories of income are derived from a certain degree of exertion or activity whereas the latter categories are "passive-sourced" income.

The Board also held that "outgoings and expenses" in s 14(1) would include "cost of sales". In the Board's view, the Comptroller's basis of assessment was due to the adherence of the completed contract method until the TOP was granted for the development, and the abandonment of such method immediately thereafter. The Board rejected this basis and held that the completed contract method should be applied entirely. Accordingly, the Board ruled in the taxpayer's favour that the corresponding deductions of 85% and 15% of the costs were allowable (against the 85% and 15% of sales proceeds) for YAs 1999 and 2000 respectively (see also Chapter 7 on Deductions at ¶7-100ff).

To summarise, for a housing developer:

MPD case:	Income is derived from the date of issue of the TOP.
KE case:	As the housing developer would be entitled to receive only 85% of the revenue from the sale of units as at the date of issue of the TOP (because of restrictions on the use of the sale proceeds under the housing developer's rules), only 85% of the costs incurred would be allowed to be deducted from that amount of revenue for the YA concerned.

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Deemed-sourced provisions

To remove the uncertainty of applying the source rules based on case principles, Singapore has deemed-source provisions in s 12. An effect of such provisions is to create a source of income in Singapore where none may exist under general tax principles. Note that such deemed-source provisions are not charging provisions and do not in themselves impose a tax.

Section 12 contains provisions that deem the source of certain types of income to be in Singapore. These types of income include the business profits of a non-resident person; employment income; interest, commission and some other payments related to loans and indebtedness; royalties and know-how payments; technical assistance fees; management fees; rent for the use of movable property; income of a non-resident owner/charterer of ships or aircraft; income of a non-resident person from cable or wireless undertakings; and certain income of a junket promoter (see Chapters 5 (at ¶5-110ff), 6 (at ¶6-000ff) and 13 (at ¶13-300ff)).

Whether a non-resident person derives trading income (from the sale of goods) from Singapore depends on whether that person is trading in Singapore or trading with Singapore. This distinction is based on United Kingdom (UK) cases and is explored in Chapter 4 (at ¶4-100ff).

Exemption of income

Certain types of income are exempt under the law. For example:

(i) employment income derived by a non-resident individual from the exercise of his employment duties in Singapore for 60 days or less during the calendar year (s 13(6)), and

(ii) income from certain qualifying activities (eg pioneer income) (the *Economic Expansion Incentives (Relief from Income Tax) Act (Cap 86)* (the "EEIA").

Exempting provisions are further discussed in Chapters 4 (at ¶4-100ff), 5 (at ¶5-110ff), 6 (at ¶6-000ff) and 19 (at ¶19-100ff).

¶3-300 Meaning of "received in Singapore from outside Singapore"

Foreign-sourced income is taxable in Singapore only if it is received in Singapore and not tax exempt. For the avoidance of doubt, s 10(25) clarifies that the following amounts would be regarded as "income received in Singapore from outside Singapore" whether or not the source from which the income is derived has ceased:

"(a) any amount from any income derived from outside Singapore which is remitted to, transmitted or brought into Singapore;

(b) any amount from any income derived from outside Singapore which is applied in or towards the satisfaction of any debt incurred in respect of a trade or business carried on in Singapore; and

(c) any amount from any income derived from outside Singapore which is applied to purchase any movable property which is brought into Singapore."

Before s 10(25) (previously s 10(19), *2001 Ed* and s 10(15), *1996 Ed*) was enacted in 1995, there was considerable dispute on the exact scope of the second limb of s 10(1):

(a) It was not clear whether a receipt would be a receipt of income from abroad, if the source that gave rise to the receipt in the first place has ceased.

(b) According to Indian tax cases, the "doctrine of first receipt" meant that if a person has received a sum of money as income abroad (ie from outside India), that person could no longer receive any part of the money in India as income again. The argument is that a "receipt" implies two parties, and a person may receive a sum of money as income only from another person, on the occasion of first receipt. Any subsequent remittance by that person to Singapore of that sum of money does not therefore amount to "income received in Singapore from outside Singapore" because the person cannot receive income from himself. Opinions differed as to whether this doctrine would apply in Singapore.

(c) It appeared that some taxpayers tried to bring into Singapore capital assets acquired out of income derived abroad. The objective of such conversions was to avoid falling into the second limb of s 10(1).

Administrative practice

In applying s 10(25), the Inland Revenue Authority of Singapore (IRAS) will adopt the following administrative practice:

(a) Section 10(25) will be applied to tax foreign income belonging to a resident individual or to an entity which is located in Singapore only if such income is received in Singapore. Non-resident individuals and foreign businesses which are not operating in or from Singapore can therefore bring their foreign income to Singapore without fear of being taxed on the income. Hence, they will not be discouraged from using Singapore's banking and fund management facilities.

(b) Individuals who migrate to Singapore will not be taxed on foreign income received in Singapore if the foreign income received after such individuals take up residence in Singapore was earned before their relocation to Singapore. Thus, foreigners will not be disadvantaged in any way as a result of their move.

(c) Foreign income that is reinvested overseas without being repatriated to Singapore will not be treated as having been received in Singapore at the point of reinvestment. With this concession, s 10(25)(b) will principally close a loophole where taxpayers seek to avoid tax on their foreign income by using it overseas to discharge any indebtedness or liabilities incurred for the purposes of any trade or business carried on in Singapore. This concession is in line with the Government's efforts in promoting regionalisation of Singapore's businesses.

(d) Taxpayers may have funds outside Singapore, which are derived from both foreign income and other non-income sources. If they wish to remit the non-income funds only, the IRAS may accept such claims subject to certain conditions. The taxpayer must provide an account of the funds from income and non-income sources on the date before repatriation and show that after the repatriation, the amount of funds remaining outside Singapore is no less than the amount from income sources which have not been repatriated, as illustrated in Example 1. Alternatively, the taxpayer can show that the amount repatriated

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is not more than the capital sent out net of any capital losses. This alternative will reduce the need for taxpayers to track and show that the funds repatriated are from non-income sources. Additionally, for the purpose of determining the amount of foreign income which has been derived overseas, the IRAS will allow revenue losses incurred overseas to be set off against the foreign income derived as it recognises that not all overseas projects are profitable.

Example 1

Company A, a Singapore resident company, received in Singapore $800,000 from its overseas bank account during the year 2014. Available records show that in prior years Company A had remitted monies overseas amounting to $6m for the purpose of providing interest-bearing loans to its overseas subsidiaries and that the monies from these loans had not yet been brought back into Singapore. Further, the cumulative foreign-sourced interest income of $600,000 had not been received in Singapore.

Company A's claim that the funds of $800,000 remitted to Singapore in 2014 were from non-income sources might be accepted by the IRAS because the funds of $6.6m ($6m plus $600,000 interest) remaining outside Singapore at that time were more than the unremitted interest income of $600,000. Funds remaining outside Singapore after the transfer would be $5.8m.

	Foreign income sources ($)	Foreign capital sources ($)
Before remittance to Singapore	600,000	6,000,000
Amount treated as remitted to Singapore		
(subject to satisfying the IRAS conditions)	0	800,000
After remittance to Singapore	600,000	5,200,000

(e) If a taxpayer applies foreign-sourced income to purchase any movable property which is then brought into Singapore, the amount of income received by the taxpayer which is liable to tax in Singapore would be the amount of foreign income applied to acquire the assets. The net book value or market value of the movable property at the time the property is brought into Singapore is not relevant.

(See IRAS e-Tax Guide "Section 10(25) of the Singapore Income Tax Act — Interpretation and Practice" (3rd Ed), published on 5 December 2011.)

¶3-400 Revenue versus capital receipts

As Singapore does not impose a tax on capital gains, there is a need to distinguish between a revenue receipt and a capital receipt. Two methods are commonly used to illustrate this distinction:

Tree and fruit analogy

Using this often cited analogy, capital is likened to the tree that gives rise to the fruit, that is, the income. Income is seen as the "produce" of capital, being something identifiable and severed from that of capital (*Eisner v Macomber* (1919) 252 US 189). A house that is let out could be regarded as the tree from which the rental income, the fruit, is derived. Similarly, a fixed deposit could be seen as the capital that yields the interest income. The house and the fixed deposit are capital; the rent and interest are income.

Fixed and circulating capital

An asset forms part of the fixed capital if it is retained in the business with the object of producing profit. An asset is part of the circulating capital if it is acquired in the ordinary course of trade and is sold, or it is used in the manufacture of what is sold. Only receipts in respect of circulating capital are taxable as income.

The revenue/capital distinction is discussed in ¶4-500.

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CHAPTER 4

INCOME FROM TRADE, BUSINESS, PROFESSION OR VOCATION

¶4-100 Introduction

Income from a trade, business, profession or vocation is assessable under s 10(1)(a) of the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act"). The Act does not define any of these terms. Case law, however, provides some guidance on their meaning. The distinction between "trade", "business" and "profession" on the one hand, and "vocation" on the other, is important for the following reasons:

(i) Only a person carrying on a trade, business or profession may qualify for capital allowances in respect of capital expenditure that the person incurs on the provision of machinery or plant.

(ii) The incentives in the *Economic Expansion Incentives (Relief from Income Tax) Act (Cap 86, 2005 Revised Ed)* apply generally only to a trade or business.

Illegal activities

The legality of activities is not relevant for purposes of determining the taxability of the receipts derived from such activities. If an illegal activity has all the characteristics of a trade, the gains or profits from it are taxable under s 10(1)(a). Thus, in *Lindsay v IRC* (1932) 18 TC 43, income derived from shipping whisky to the United States of America (USA) during the prohibition was held to be taxable.

Voluntary payments

As a general rule, a voluntary payment will be regarded as a capital receipt in the hands of the recipient if the payment is an unexpected and unsolicited gift made after the termination of a business relationship that is not expected to continue, and for which the recipient has been adequately remunerated.

Deemed income

In Singapore, any payment accrued to a self-employed woman under s 9 of the *Child Development Co-Savings Act (Cap 38A, 2002 Revised Ed)* is deemed to be income from her trade, business, profession or vocation taxable under s 10(1)(a) (s 10(26)).

¶4-200 Trade

The badges of trade

The Final Report of the 1954 Royal Commission in the United Kingdom (UK) listed six "badges of trade" as relevant in deciding whether certain sales undertaken by a person constituted trading; if yes, the gains from the sales are taxable as trading income. All the six badges are to be taken into consideration and, in general, none of the badges is in itself conclusive. The six badges do not apply, however, to a situation where services are performed in return for a payment. The Singapore Board of Review has endorsed the badges of trade.

(a) Subject matter of realisation

Certain forms of property, such as commodities or manufactured articles, are normally the subject of trading. Other types of property may bring personal enjoyment (eg paintings or collector's items) or income (eg shares) to the owner. The subsequent sale of such property is less likely to be regarded as trading.

In *Rutledge v CIR* (1929) 14 TC 490, the taxpayer bought one million rolls of toilet paper and obtained a profit from selling them. He was held to be trading, even though this was the only transaction.

(b) Length of period of ownership

The longer the holding period of the property, the less likely would one be held to be trading.

In *KE (S) Pte Ltd v CIT* (1998) MSTC 5,235, the Board of Review applied the six badges of trade and held that the taxpayer's profits from the sale of three properties were taxable. The Board rejected the taxpayer's contention that the properties had been held as long-term investments. The evidence indicated, among other things, that the properties were held for a relatively short period of time.

In *OUF Pte Ltd v CIT* (1998) MSTC 5,256, the taxpayer company was originally established to engage in the construction, development and management of properties. Instead, it carried on the business of holding investments. Over a period of 19 years, the taxpayer bought and sold various quoted and unquoted shares.

The Board of Review held that the gain on the sale of shares was not taxable. The Board took into account the following facts among others:

(i) Most of the shares were held for a long period of time.

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(ii) The taxpayer sold an average of only two counters of shares a year. In terms of stocks and shares, the frequency of transactions was extremely low to constitute trading.

(iii) Most of the shares held were in companies in the same group. The Board took the view that the shares had been bought for the purpose of preserving the Group's corporate structure.

(iv) The taxpayer's shareholding was on the whole quite stable, with no substantial increase or decrease generally.

(c) Frequency or number of similar transactions by the same person

Repeated transactions of the same kind are more likely than an isolated transaction to be held to constitute trading.

In *Pickford v Quirke (HMIT)* (1927) 13 TC 251, the taxpayer bought and resold a spinning mill. Later, in partnership with a few others, he repeated the transaction four times. *Rowlatt* J said that one transaction does not usually give rise to a finding of trading but systematic repetition gives rise to an inference of trading.

(d) Supplementary work on or in connection with the property realised

Where improvements are made to an asset to increase its value or to make it more marketable, or if any special efforts are made to find or attract purchasers, the subsequent sale of the asset may be a trading transaction.

In *Cape Brandy Syndicate v IRC* [1921] 2 KB 403, the taxpayers were members of different firms. They bought three lots of brandy, shipped the brandy to London where it was blended, mixed and packaged before it was sold. It was held that they were trading.

(e) Circumstances responsible for realisation

Where a person is forced to sell property as a result of an urgent need for cash or a threat of foreclosure by creditors, the sale is less likely to indicate trading.

The sale of land after the forced cessation of business was held to be the realisation of a capital asset (*SEA Sdn Bhd v DGIR* (1988) 1 MSTC 233). A taxpayer who bought land with the intention of cultivating it but later sold it because it was infertile was held to have realised an investment (*AN v DGIR* (1988) 1 MSTC 247).

(f) Motive

The existence of a motive in acquiring an asset for resale at a profit is another badge of trade.

Several Singapore Board of Review decisions involving the sale and purchase of real property have stressed the importance of intention in determining whether a transaction was a trading transaction (*SCL Pte Ltd v CIT* (1991) 1 MSTC 5,032; *C Ltd v CIT* (1991) 1 MSTC 5,052; and *W Holdings Private Limited v CIT* (1992) 1 MSTC 5,135). Motive can be inferred from surrounding circumstances in the absence of direct evidence and even, if necessary, in the face of the seller's own evidence.

In *DHSO v CIT* (2004) MSTC 5,313, the taxpayer derived gains from the sale of two properties. The Board applied the six badges of trade and held, on the balance of probabilities, that there was trading by the taxpayer. The gains were therefore taxable under s 10(1)(a).

However, an accretion to capital does not become income merely because the original capital was invested in the hope and expectation that it would rise in value.

In *Simmons v IRC* (1980) 53 TC 461, a company originally acquired properties for investment but later sold them as the prospects for investment properties were unfavourable. It was held that the sale was a realisation of capital and not a sale in the course of trade.

In the local case of *BBO*, the badges of trade were applied to determine the nature of the gains on sale of shares derived by a general insurance company in Singapore. A case history and summary of *BBO* follows below.

U Limited v CIT (2012) MSTC ¶50-010

In *U Limited v CIT*, the Singapore Board of Review held that, on the balance of probabilities, the taxpayer had not engaged in any trade or business in the transaction of the shares in question.

The taxpayer was formerly a member of the O Group of companies. It was carrying on the business of a general insurer in Singapore. The taxpayer was required by law to establish separate insurance funds for each class of insurance business and ensure that all assets, receipts, liabilities and expenses were properly attributed to the relevant fund. In this regard, the taxpayer established the Singapore Insurance Fund (SIF) and an Offshore Insurance Fund (OIF) for its Singapore and offshore policies respectively. The taxpayer used its SIF and OIF to invest in the shares of Q Ltd and XY Ltd.

On 29 June 2001, pursuant to an offer made by DEF Bank to acquire ABC Bank, the taxpayer sold its entire portfolio of ABC, Q Ltd and XY Ltd shares. In return, the taxpayer received total cash proceeds of $70,805,320 and 6,998,791 DEF shares. The taxpayer derived gains of about $100m from these sales for the year of assessment (YA) 2002 and YA 2003. The Comptroller of Income Tax (the "Comptroller") took the view that the gains from the disposal of these shares were revenue in nature and taxed the gains. The Comptroller contended that there was a mini-regime for taxation of insurance companies under s 26 of the Act and that any gains realised from the sale of investments by an insurance company were taxable.

The Board rejected the Comptroller's contention. It held that insurers can hold shares as capital assets. On the facts, the shares were core stocks and were held for long-term strategic purposes to preserve the O Group's corporate structure. The long holding period of the shares (about 40 years for the ABC shares, some 20 years for the Q Ltd shares and some 27 years for the XY Ltd shares) indicated that the shares were acquired for a long-term strategic purpose. The fact that the XY Ltd shares were not listed lent further support to the taxpayer's argument that the gains derived from the sale of these shares were capital gains.

The Comptroller appealed to the High Court and thereafter to the Court of Appeal.

CIT v BBO [2013] SGHC 74

The High Court upheld the Board's decision. According to the High Court, the scheme in s 26 of the Act contemplates that an insurer may well derive capital gains instead of income; moreover, the regulatory requirement imposed by the Monetary Authority of Singapore (MAS) on an insurance fund to have assets to provide a minimum level of asset protection for the fund's policyholders does not restrict an insurer from holding capital assets in the fund.

CIT v BBO [2014] SGCA 10

The Court of Appeal noted that the presumption of fact that the investment gains of insurance companies are usually taxable is predicated on what was viewed to be the intention and purpose behind the acquisition and holding of such investments by most insurance companies,

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namely, for the purposes of trade and profit generation. The natural and logical corollary of this, however, is that convincing evidence which shows that the predominant motivation of acquiring the investment is different (eg strategic) would also be relevant in evaluating whether the gains were capital gains (instead of revenue). It was not disputed as a fact that the shares were acquired and held as part of the group corporate preservation strategy. This gives rise to a very strong inference that the shares were "structural" or capital assets, and not revenue assets in the sense of their realisation being inherent in or incidental to the carrying on of the taxpayer's insurance business. On the evidence, the Court of Appeal affirmed the High Court's decision and held that the gains were capital in nature and not taxable.

¶4-250 Exemption of gains or profits from disposal of ordinary shares

The gains or profits from the disposal of equity investments by a company during the period 1 June 2012 to 31 May 2017 (both dates inclusive) will qualify for tax exemption under s 13Z.

Tax exemption will apply to the gains or profits derived by a company ("divesting company") from the disposal of ordinary shares in another company ("investee company") which are legally and beneficially owned by the divesting company immediately before the disposal. The divesting company can choose to avail or not to avail itself of the tax exemption. As a condition for tax exemption, the divesting company must own a minimum 20% of the ordinary shares in the investee company for a continuous period of at least 24 months ending on the day immediately before the date of disposal of such shares.

The investee company can be incorporated in Singapore or elsewhere, and it can be listed or unlisted.

Where the legal interest in any ordinary shares had been transferred by the divesting company to another under a securities lending or repurchase arrangement, the divesting company shall be treated as the legal and beneficial owner of those ordinary shares in the investee company during the borrowing period (s 13Z(4)).

The divesting company seeking the exemption must provide the required information and supporting documents when lodging its return for the YA relating to the basis period in which the disposal occurs. Where the company given the exemption has in an earlier YA claimed a deduction or been charged to tax for certain losses or profits attributable to the disposed shares, the amount of the losses or profits will be treated as chargeable income or allowable expenses of the company in the year of the disposal.

Section 13Z does not apply to:

(a) the disposal of shares the gains of which are included as part of the income of a company referred to in s 26 (Note: s 26 governs the tax treatment of insurers)

(b) the disposal of shares in a company which is in the business of trading or holding Singapore immovable properties (excluding property development) where the shares are not listed on a stock exchange in Singapore or elsewhere, or

(c) the disposal of shares by a partnership, limited partnership or limited liability partnership, one or more of the partners of which is a company or are companies.

For s 13Z exemption purposes, a divesting company can be resident or not resident in Singapore, so long as it is not disqualified under (a) or (b) above.

The tax exemption applies similarly to the gains derived by a registered business trust, if the ordinary shares in the investee company constitute trust property of the registered business trust.

For share disposals in other scenarios, the tax treatment of the gains or losses arising on the disposals will continue to be determined based on the facts and circumstances of each scenario (ie by application of the six badges of trade). Thus, the tax treatment of gains or losses from the disposal of equity investments will continue to be determined based on normal tax rules in the following cases:

(i) Where a divesting company had held at least 20% of the ordinary shares in an investee company for a continuous period of at least 24 months but incurs a loss from the disposal of the ordinary shares in the investee company (in this case, the losses are not immediately disregarded).

(ii) Where a divesting company derives gains from the disposal of ordinary shares in an investee company and the disposal does not meet the conditions for a s 13Z exemption (in this case, the gain is not automatically subject to tax).

(iii) Where a divesting company makes gains or losses from the disposal of non-ordinary shares in an investee company.

The s 13Z exemption scheme will be reviewed after the five-year period.

(See IRAS e-Tax Guide "Income Tax: Certainty of Non-Taxation of Companies' Gains on Disposal of Equity Investments", published on 30 May 2012.)

¶4-300 Business, profession or vocation

Business

The meaning of the word "business" in s 10(1)(a) was examined in the Singapore case *DEF v CIT* [1961] MLJ 55.

The taxpayer was an employee of a firm trading in commodities. He had no prior dealings in real property. Having received information from a neighbour's wife that a rubber estate in Ipoh was for sale, he purchased it on 22 December 1955, without prior inspection, for $240,000 that he had borrowed interest-free from his brother. On 9 January 1956, he sold the estate for $485,000 to a company, of which his wife and his brother were shareholders. Out of the sale proceeds, he repaid the loan and invested the balance. Throughout the transaction, the taxpayer was not the nominee of any person. The tax authorities assessed the gain on sale as income falling under s 10(1)(a) of the then *Income Tax Ordinance*.

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The Court of Appeal held in favour of the taxpayer. *Buttrose* J said:

> "Now the word 'business' in section 10(1)(a) of the Ordinance is used in association with 'trade', 'profession' or 'vocation', all of which connote habitual and systematic operations, a continuity or repetition of acts or similar operations. Taking the Ordinance as a whole there can be no doubt that the business must be carried on and section 10(1)(a) clearly implies it. The term 'business' as used in the section does not apply to one isolated act; it does not mean a 'business transaction'."

In the same case, *Ambrose* J said:

> "In my view, the fundamental idea underlying the three words 'trade . . . profession or vocation' in section 10(1)(a) of the Singapore Income Tax Ordinance is the continuous exercise of an activity . . . the word 'business' must, therefore, be given its ordinary meaning, namely, an occupation habitually engaged in, especially for livelihood or gain . . . I take the view that the business from which the profit is derived has to be a business which has been carried on. The phrase 'carried on' implies a repetition or series of acts . . . I must make it clear, however, that in my opinion, if it is proved that a person intended to carry on a business and that he carried out one business transaction with that intention, then he has carried on a business."

In *MSI Pte Ltd v CIT* (1997) MSTC 5,221, the taxpayer carried on activities to construct a warehouse and then to let it out to a tenant. These activities included awarding tenders, appointing and liaising with architects, carrying out soil tests and monitoring the construction of the warehouse through liaison and documents sent to the taxpayer by its engineers. The Board of Review held that, on the facts, the taxpayer was not in the business of property investment or in the business of letting property, but was a mere landlord. The Board described "business" as follows:

> ". . . in general, 'business' is used to indicate a wide group of activities that are not purely recreational, that are commercially undertaken and usually, but not necessarily, for profit. In s 10(1)(a) of the Act, the word 'business' is placed together with 'trade', 'profession' or 'vocation' and should therefore be interpreted in that light."

The Board also identified the general characteristics of "business" as:

(i) the profit-making nature of activities

(ii) the repetition and regularity of activities

(iii) the organisational structure

(iv) the keeping of books and records

(v) the volume of operations, and

(vi) the amount of capital employed.

Presumption of "business"

Where a company puts its assets to gainful use, there is a *prima facie* presumption that the company is carrying on a business (*American Leaf Blending Co Sdn Bhd v DGIR* (1978) STC 561). This presumption does not apply to an individual.

In *MSI Pte Ltd v CIT* (1997) MSTC 5,221, the Board of Review clarified that a presumption of business arises only when a company has done all that is needed to start trading or do business. For the presumption of business to arise, a company must be involved in "business activities" and the intention to do business must be gleaned from the activities as well as from the Memorandum of Association.

Profession

A "profession" involves an occupation requiring either purely intellectual skill or any manual skill controlled by the intellectual skill of the person (*IRC v Maxse* [1919] 1 KB 647, 12 TC 41). However, the term "profession" is to be distinguished from an employment that requires the exercise of professional skills.

For example, a doctor who is employed by a hospital is regarded as exercising an employment and his income therefrom is taxable under s 10(1)(b). By contrast, a doctor who runs his own clinic would be regarded as exercising a profession, the income from which is taxable under s 10(1)(a).

Vocation

The word "vocation" is analogous to "calling", meaning the way in which a man passes his life (*Partridge v Mallandaine* (1886) 18 QBD 276; 2 TC 179). In that case, a bookmaker who accepted bets was held to be carrying on an organised vocation.

¶4-400 "Trading in" versus "trading with"

For trading income to have a source in Singapore, a person has to be **trading in** Singapore. By contrast, a person who is **trading with** Singapore is not subject to Singapore tax as the source of the trading profits would be outside Singapore.

It is a question of fact whether a non-resident person:

(i) is trading with (another person in) Singapore, or

(ii) is trading in Singapore on its own account or through an agent.

If an agent regularly contracts for the sale of goods in Singapore on behalf of the non-resident, the non-resident may be regarded as carrying on a trade in Singapore.

If, however, the agent in Singapore is involved merely in soliciting orders in Singapore on the non-resident's behalf and the orders are then referred to the non-resident for acceptance in his home country, the non-resident will not be regarded as trading in Singapore.

The presence of a purchasing function alone does not constitute trading in Singapore. However, the place where sales or contracts for sales are made may have tax implications. If a non-resident person consigns goods to a Singapore agent who agrees to sell the goods on certain terms and to account to the non-resident for a proportion of the sale proceeds, the non-resident may be regarded as trading in Singapore.

Generally, a contract is made where the act of acceptance takes place. Where a written contract does not exist, acceptance is in the location where the services are performed or where the goods are delivered. In broad terms, where a non-resident sends goods to Singapore on a cost, insurance and freight (CIF) contract, the goods are considered as delivered in Singapore; where goods are on a free on board (FOB) basis, they are delivered at the port of loading, ie outside Singapore.

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As set out in ¶2-800, the question whether a permanent establishment (PE) exists in Singapore is in principle separate from the question whether the non-resident person has derived trade source income in Singapore. As a matter of fact, however, in many situations, a non-resident person that has a PE in Singapore is also trading in Singapore. The Inland Revenue Authority of Singapore (IRAS) has therefore clarified that the following types of activities will not come within the ambit of s 10 even if it falls within the s 2(1) definition of a PE:

(a) a mere purchasing function in Singapore of a foreign entity, and

(b) stocks of goods warehoused in Singapore for delivery but no trading activities are carried on in Singapore.

It follows from this IRAS clarification that a non-resident person can have a PE in Singapore without any exposure to Singapore tax.

Where the non-resident person is resident in a country with which Singapore has a tax treaty, the treaty definition of PE must be borne in mind. In this context, only the business profits that are attributable to the PE in Singapore of the treaty-resident person are liable to Singapore tax. In the typical treaty-country scenario, the non-resident is not deemed to have a PE in Singapore merely because it carries on business in Singapore through an independent agent that is acting in the ordinary course of its own business when acting on behalf of the non-resident (for details, see ¶14-520).

Some factors that the Comptroller may consider in determining whether or not a non-resident person is trading in Singapore (ie has part or all of the trading income regarded as derived from Singapore) through an agent include:

(a) Does the agent accept orders in Singapore on behalf of the non-resident person or does the agent merely transmit the solicited orders to the non-resident for the latter's acceptance abroad?

(b) Are the goods sent directly to the buyer or to the agent for delivery to the buyer?

(c) How and where are the payments for the goods made?

(d) Does the agent maintain a stock of merchandise in Singapore belonging to the non-resident from which he makes deliveries in respect of the contracted sales?

Electronic commerce

In the context of electronic commerce (e-commerce), the IRAS regards a server merely as a communication tool and has stated that the mere presence of a physical server in Singapore will not amount to a PE. The IRAS will look at the extent of the company's business activities in Singapore to determine whether a company doing business through cyberspace is trading in Singapore such that its trading income is liable to Singapore tax. For this purpose, a server is taken to be a device upon which e-commerce applications may be sited or run from to allow e-commerce to take place. A server would usually include the computer hardware and its operating and basic application software. The IRAS has also given its views on the taxation of the income from certain business models, based on various assumptions. These assumptions include whether the company's business operations are in Singapore, and where the website is hosted.

(See IRAS e-Tax Guide "Income Tax Guide on E-Commerce" (3rd Ed), published on 23 February 2001.)

¶4-500 Distinction between revenue and capital

As Singapore does not have a capital gains tax, only receipts of a revenue nature are taxable.

In *Whiteman on Income Tax (3rd Ed) (London: Sweet & Maxwell, 1988)*, the authors formulated five basic propositions based on UK cases concerning the capital/revenue distinction.

At the outset, it may be useful to clarify the relationship between the five propositions and the six badges of trade.

Whiteman's propositions appear to be drawn from cases in which the person was already carrying on an existing trade, business or profession. The propositions can therefore be applied to determine the capital/revenue nature of receipts not only from the sale of an asset by that person but, more generally, of any sums received by that person. By contrast, the six badges of trade can be applied only in a scenario involving a sale of an asset by any person not known to be dealing (ie trading) in that asset.

For example, it would be more appropriate to apply the six badges of trade in determining whether the gains derived by an individual (not known to be an art dealer) from the sale of paintings are trading income or capital in nature.

The five propositions are as follows.

(a) Payments for the sale of business assets are prima facie capital receipts

As a general rule, when a trader sells the assets of his business, this does not give rise to a trading profit except to the extent that those assets constitute trading stock.

(b) Payments received for the destruction of the recipient's profit-making apparatus are capital receipts

Payments which are received by a taxpayer for the destruction of his profit-making apparatus are on capital account.

Termination of market-sharing agreement

In *Van Den Berghs Ltd v Clark* [1935] AC 431, the rights and advantages surrendered by the taxpayer company on cancellation of a contract were held to destroy the whole structure of its profit-making framework.

The taxpayer had entered into a market-sharing agreement with a competing Dutch company in 1912. The agreement provided for the sharing of profits of their respective margarine businesses in specified proportions, the creation of joint arrangements regarding prices and limitation of areas of supply, and a restriction on the parties preventing them from entering into any pooling arrangements with third parties which could injure the interests of the allied businesses. Following a dispute, the companies agreed to terminate the agreement on condition that the Dutch company paid a sum of money to the taxpayer.

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The House of Lords held that the receipt was capital in nature and therefore not taxable. Lord *Macmillan* said:

> "[T]he cancelled agreements related to the whole structure of the appellants' profit-making apparatus. They regulated the appellants' activities, defined what they might and what they might not do, and affected the whole conduct of their business."

Termination of ship management agreement

In *Barr, Crombie & Co Ltd v IRC* (1945) 26 TC 406, the taxpayer company carried on business as ship owners, shipping managers and agents. It entered into a 15-year agreement with their client, a shipping company. Eight years before the agreement ended, the client went into voluntary liquidation and terminated the agreement. The agreement provided that, in such an event, payment must be made for the unexpired term of the agreement, and the client duly paid the taxpayer a sum of £16,000. The taxpayer had derived 88% of its income from managing the ships of this client. Following the termination, the taxpayer steadily reduced the size of its premises and staff and eventually lost its entire business. It was held that the receipt was not taxable as the company's profit-making apparatus was severely affected by the termination of the agreement. The description of the payment as "remuneration" in the agreement was not conclusive of whether the payment was income or capital to the taxpayer.

(c) Payments in lieu of trading receipts are revenue receipts

A payment is taxable if it is paid in lieu of a receipt that would have formed part of the taxpayer's trading profits.

In *Gray v Lord Penryhn* (1937) 21 TC 252, two employees of the respondent trader had misappropriated money by falsifying the wages accounts. The respondent's auditors admitted negligence on their part in not making certain enquiries, and paid the respondent a sum equal to the amount misappropriated. It was held that this sum was a trading receipt.

Insurance contracts

Based on UK case law, insurance money received for the loss of trading stock destroyed by fire was a trading receipt.

This principle is reflected in s 10(3), which states that any insurance against the loss of profits is to be taken into account in ascertaining any profits or income.

Compensation for non-performance of trading contract

Except in the rare situation where a contract relates to the whole, or substantially the whole, structure of a trader's profit-making apparatus, compensation received for the cancellation of trading contracts is taxable.

In *Wiseburgh v Domville* (1956) 36 TC 527, the taxpayer had only two agency agreements, one of which provided 60% of his trading profit. Compensation received for the loss of that contract was held to be a revenue receipt, as the loss was not sufficiently damaging to the business.

Damages for tort by a trader

Where damages are payable to a trader for a tort committed against him, that payment will be a trading receipt if it is paid as compensation for the loss of trading profits resulting from the tortious act.

In *London and Thames Haven Oil v Attwooll* (1967) 43 TC 491, a jetty of the taxpayer was damaged and out of use for a period of time due to the negligent handling of a tanker. The taxpayer received compensation which exceeded the repair costs by £21,404. The Special Commissioners found that the sum of £21,404 was "to fill the hole created in the company's profits" and therefore taxable as a trading receipt. The Court of Appeal upheld this finding.

(d) Payments made in return for the imposition of substantial restrictions on the activities of a trader are capital receipts

Sterilisation of assets

In *Glenboig Union Fireclay Co Ltd v IRC* (1922) 12 TC 427, the taxpayer carried on business as manufacturers of fireclay goods and as merchants of fireclay, and was a lessee of fireclay fields in the neighbourhood of a railway. It later received compensation from the railway company for not working these beds of clay which might have caused the railway line to subside.

It was held that the compensation was for the sterilisation of a capital asset and was therefore not taxable. This was despite the fact that the amount was calculated based on the net profits that otherwise would have been earned from exploiting the asset. The basis upon which the amount of compensation was calculated is not conclusive of the nature or quality of the compensation (ie whether revenue or capital) to the recipient.

Restrictive covenants

In *Higgs v Olivier* (1951) 33 TC 136, an actor received a sum of money as consideration for an undertaking by him not to act in, produce or direct any film for any other person for a period of 18 months. It was held that the sum was not taxable.

(e) Payments of a recurrent nature are more likely to be treated as revenue receipts

In *Evans Medical Supplies v Moriarty* (1957) 37 TC 540, an English company, which manufactured medical supplies by a number of secret processes, had a worldwide trade. It carried on business in Burma through an agency. The Burmese Government wanted to set up its own local pharmaceutical industry and the company agreed to disclose secret processes and provide other information to the Burmese Government. Under the agreement, a "capital sum" of £100,000 was to be paid to the company plus an annual fee of 5% of the value of all products produced at the Burmese Government's proposed pharmaceutical factory or £25,000, whichever sum was the greater, for continuing technical and management advice to be provided by the company. On the facts, the supply of such know-how (ie the secret processes and information) resulted in a progressive loss of the Burmese market to the taxpayer. The issue was whether the £100,000 payment was a capital receipt. A majority of the House of Lords held that it was not taxable as a receipt from an existing trade.

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Evans Medical Supplies was distinguished from *Rolls-Royce Ltd v Jeffrey* (1962) 40 TC 443. In *Rolls-Royce*, the company embarked on a deliberate policy of licensing companies in other countries to manufacture its engines on terms which involved the payment of capital sums (so-called) and royalties. The House of Lords held that the lump sums were trading receipts on revenue account. The engineering "know-how" sold in this case was regarded as a regular product of the trade. Lord *Reid* said that a key difference between *Evans* and *Rolls-Royce* was that "in [the *Evans case*] there was a single transaction, whereas in the present case there was a series of similar transactions [arising] out of a deliberate policy".

Whether a special levy collected by a management corporation is revenue or capital

In *BLP v CIT* [2013] SGITBR 2, the Income Tax Board of Review held that a special levy collected by a management corporation from subsidiary proprietors to finance a loan of $11,600,000 to undertake a project of retrofitting and upgrading works to the common property was revenue in nature. The special levy was therefore to be included in the formula to determine if the management corporation was carrying on a trade under s 11(1) of the Act (see also ¶15-210). The Board's decision, which was in favour of the Comptroller, was reversed on appeal.

The High Court in *BLP v CIT* [2014] SGHC 127 examined the nature of the work to be done to the common property as a whole, and concluded that the project undertaken by the management corporation was a major one-time overhaul intended to strengthen the property and that it even created new assets (on the facts, the property was more than 25 years old and no major retrofitting had been done to it during that period to improve the image of the building and upgrade its facilities/services). The High Court took the view that the purpose of the transaction must be looked at. If the transaction created a new asset or enhanced an existing asset, the transaction would likely be capital in nature. It was also of the view that the special levy, the loan and the project of retrofitting and upgrading works to the common property of the complex were all closely linked. As the special levy was used to finance the loan taken for such retrofitting and upgrading work to be done to the common property, it was inextricably linked to the project and was thus capital in nature. The special levy was therefore not to be included in the formula referred to above.

IRAS TREATMENT OF EXCHANGE GAINS AND LOSSES

¶4-610 Introduction

General tax principles

Based on income tax principles, exchange gains are taxable and exchange losses are deductible only if they:

(i) are on revenue account, and

(ii) are realised.

To determine whether an exchange difference is revenue or capital in nature, one has to examine the character of the underlying transaction that gave rise to the exchange difference. For example, exchange differences relating to the purchase and sale of trading stock would be of a revenue nature, while exchange differences relating to the purchase of fixed assets would be capital in nature.

According to tax principles, realisation occurs only when the foreign currencies are *physically converted* into the functional currency of the business, or vice versa. The functional currency (also known as measurement currency) is the currency of the primary economic environment in which the entity operates.

For example, if a sale is transacted in a foreign currency (eg US$) and payment is received from the US trade debtors in US$ in the same accounting period, as long as the exchange rate between the US$ and the S$ (here S$ is assumed to be the functional currency) at the time of sale differs from the exchange rate at the time of payment, an exchange gain or loss would arise. In this example, the exchange difference has arisen upon settlement; it is not realised, however, until the US$ has been converted into S$.

IRAS practice before YA 2004

Because the accounting treatment of exchange differences is not aligned with strict tax principles, adjustments to accounting profits may be necessary to arrive at taxable profits. To simplify tax compliance, the IRAS practice before YA 2004 was as follows:

(i) *Sales/purchases settled in the same accounting period*

Exchange gains or losses of a revenue nature were taxable or deductible upon settlement (ie when the payment was received or made), and

(ii) *Sales/purchases not settled in the same accounting period*

For these transactions, the IRAS adopted a "deemed realised in the following year" basis. In other words, exchange gains or losses upon the translation of, for example, US$-denominated trade debtors and trade creditors into S$ were taxed or allowed in the YA that related to the following year.

From YA 2004, the IRAS has adopted the following concessionary tax treatment for exchange differences.

(See ¶4-620 and IRAS e-Tax Guide "Income Tax Treatment of Foreign Exchange Gains or Losses for Businesses", published on 29 June 2012.)

¶4-620 IRAS concessionary tax treatment from YA 2004

Accounting treatment adopted by all businesses for exchange differences on revenue account accepted for income tax purposes

From YA 2004, for tax purposes, the IRAS will follow the taxpayer's accounting treatment for exchange differences on revenue account. Exchange gains or losses on revenue account will be taxable or deductible respectively even if they are not realised. This concession is subject to the conditions that:

(i) the accounting treatment adopted by the business must be consistently applied to both gains and losses, and

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(ii) the business did not opt out of the concession.

(Before YA 2004, this IRAS concessionary tax treatment had applied only to banks and not all businesses.)

Exchange gains or losses of a capital or notional nature will remain (as in the past) not taxable and not deductible.

A business that does not want to avail itself of the concession can opt out when submitting its income tax return. The "opting out" is irrevocable. The consequence of "opting out" is that the business must strictly adhere to the realisation principle for all subsequent years. In other words, exchange gains or losses of a revenue nature will be taxable or deductible only when there is physical conversion of the foreign currencies into the business's functional currency, or vice versa.

Exchange differences from translating year-end balances in designated bank account treated as on revenue account

Except for companies for which money constitutes circulating capital (such as a bank), the IRAS views funds in a bank account as a capital asset. Any exchange differences arising from the translation of the year-end balances of bank accounts in foreign currencies into the functional currency would represent the cost of holding the foreign currencies to meet both the capital and revenue requirements of the business. These gains/losses are therefore not taxable/not allowable.

As a concession, the IRAS will, however, treat a foreign currency bank account (referred to as a "**designated bank account**") to be of a revenue nature if that bank account is *solely* maintained by the business for the purposes of:

- receiving payments from its sales on revenue account or from trade debtors ("trade receipts"), or
- paying its operating expenses ("revenue expenses").

Any exchange gains or losses arising from the translation of the year-end balance of the designated bank account into the business's functional currency will therefore be taxable or allowable.

To qualify for this concessionary treatment, the business must write to the Comptroller with the evidence to substantiate the claim that the designated bank account is solely used for revenue transactions.

The following example, reproduced from the Annex to the IRAS e-Tax Guide "Income Tax Treatment of Foreign Exchange Gains or Losses for Businesses", reflects the concessionary treatment.

Annex – Example to illustrate the accounting and tax treatments of foreign exchange differences arising from foreign currencies transactions

Scenario

For the accounting year ended 31 December 2002, ABC Pte Ltd conducted two US$ and one £ sales transactions. Its functional currency is S$. It maintains two bank accounts, one in S$ and another in US$. The accounting and tax treatment of the transactions are summarised in the table below.

	Date	Event	Accounting treatment		Tax treatment based on tax principle	Current tax treatment	Concessionary tax treatment
1	1 Aug 2002	Sale of goods to DEF Inc for US$100	DR Trade Debtor CR Sales Exchange Rate: S$1.7 : US$1	S$170 S$170	None	None	None
2	1 Sep 2002	Sale of goods to GHI Inc for US$200	DR Trade Debtor CR Sales Exchange Rate: S$1.8 : US$1	S$360 S$360	None	None	None
3	1 Oct 2002	Payment received from DEF Inc of US$100	DR US$ Bank CR Trade Debtor CR Forex gain (P&L) Exchange Rate: S$1.9 : US$1	S$190 S$170 **S$ 20**	S$20 is not taxable as there is no physical conversion of US$ to S$.	S$20 is taxable as it was settled during the year.	S$20 is taxable based on the accounting treatment.
4	15 Oct 2002	Sale of goods to JKL Ltd for £300	DR Trade Debtor CR Sales Exchange Rate: S$3.0 : £$1	S$900 S$900	None	None	None
5	1 Dec 2002	Payment received from JKL Ltd of £300	DR S$ Bank DR Forex loss (P&L) CR Trade Debtor Exchange Rate: S$2.8 : £1	S$840 **S$ 60** S$900	S$60 is deductible as £300 has been physically converted into S$ when deposited into S$ bank account.	S$60 is deductible as it was settled during the year.	S$60 is deductible based on the accounting treatment.
6	31 Dec 2002	Year end translation of trade debtor (GHI Inc) balance of US$200 from US$ to S$	DR Trade Debtor CR Forex gain (P&L) Exchange Rate: S$2.0 : US$1	S$ 40 **S$ 40**	S$40 is not taxable as there is no physical conversion of US$ to S$.	$40 is taxable in the following year as it is "deemed realised in the following year".	$40 is taxable based on the accounting treatment.
7	1 Feb 2003	Payment received from GHI Inc of US$200	DR US$ Bank DR Forex loss (P&L) CR Trade Debtor Exchange Rate: S$1.6 : US$1	S$320 **S$ 80** S$400	S$80 is not deductible as there is no physical conversion of US$ to S$	S$80 is deductible as it was settled during the year	S$80 is deductible based on the accounting treatment.

Legend : 1. Forex - Foreign exchange 2. Current tax treatment – the tax treatment explained in paragraph 4 of the e-Tax Guide.

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¶4-700 Tax treatment of financial assets and liabilities arising from the adoption of FRS 39

From the year 2005, companies with an accounting period beginning on or after 1 January 2005 have to comply with Financial Reporting Standard 39 (FRS 39) "Financial Instruments: Recognition and Measurement" for accounting purposes. FRS 39 primarily sets out the accounting principles for recognising financial assets and financial liabilities, including all derivatives, on the balance sheet (prior to FRS 39, some financial instruments may be recorded off-balance sheet). Generally, financial assets and financial liabilities should be measured at fair values and any resulting profits or losses should be recognised in the financial statements.

For companies with a financial year-end of 31 December 2005, the first YA to be affected by FRS 39 would be YA 2006. For companies with a financial year ending in 2006, the first YA to be affected would be YA 2007.

To minimise tax adjustments, the IRAS has changed the tax treatment of financial assets and liabilities so as to be closer generally to the accounting treatment (see IRAS e-Tax Guide "Income Tax Implications Arising from the Adoption of FRS 39 — Financial Instruments: Recognition and Measurement", first published on 30 December 2005). Section 34A sets out the basis for computing profits of financial instruments arising from the adoption of FRS 39.

FRS 39 tax treatment of financial instruments

The determination of whether financial assets or liabilities are of a capital or revenue nature would follow normal tax principles. Companies are required to submit a list of their financial assets held on capital account to the IRAS for its agreement.

The tax treatment for any gains or losses arising from the disposal of financial assets on capital accounts remains the same, ie gains are not taxable and losses are not deductible for tax purposes. Any provision for the diminution in the value of capital assets is not deductible.

Generally, the tax treatment of financial assets and financial liabilities on revenue account would follow closely the accounting treatment to minimise the need to make tax adjustments. Some aspects of the FRS 39 tax treatment are given below:

- Any profits or losses recognised in the profit and loss account arising from the valuation of financial assets on revenue account at fair values would be taxable or deductible even if they are not realised.
- Any profits or losses recognised on the balance sheet arising from the valuation of "available-for-sale" financial assets on revenue account at fair values would not be taxable or deductible.
- Any impairment losses incurred on financial assets on revenue account would be deductible. Similarly, any reversal of impairment losses would be taxable. Special rules would apply to financial institutions in certain circumstances.
- Any profits or losses recognised in the profit and loss account arising from the valuation of financial liabilities on revenue account at fair values would be taxable or deductible even if they are not realised.

- Any unrealised gains or losses arising from the valuation of hedging instruments where the underlying asset or liability is on revenue account would be taxable or deductible.

The IRAS e-Tax Guide "Income Tax Implications Arising from the Adoption of FRS 39 — Financial Instruments: Recognition and Measurement" was updated on 22 March 2010 to explain the valuation of financial assets and liabilities in computing the interest adjustment under the total asset method (see ¶7-410). Interest expenses and borrowing costs incurred in lieu of interest relating to non-income producing assets are not deductible for tax purposes. In computing the disallowed amount of interest expenses incurred on non-income producing assets, the value of financial assets would be the value reported on the balance sheet without adjustment for any provisions made and valuation surplus/deficit. Under FRS 39, financial assets and liabilities are shown at fair value, cost or amortised cost.

Taxpayers can continue to use historical cost to value the assets by submitting a written election at the time of submission of the tax return. This basis has to be applied consistently until the taxpayer opts out of the historical cost basis for the FRS 39 tax treatment. A move to FRS 39 valuation is irrevocable once it is exercised.

A taxpayer who remains on the pre-FRS 39 tax treatment will continue to use the historical cost to value its assets.

Election to maintain pre-FRS 39 tax treatment

Taxpayers who have complied with FRS 39 can elect in writing to retain the pre-FRS 39 tax treatment (see below) for tax purposes. This election must be made at the time of submitting the tax return in the first YA the taxpayer adopts FRS 39 for accounting purposes (s 34A(3)). Taxpayers are required to furnish details of the tax adjustments and must maintain relevant documents to support the tax adjustments. These taxpayers can adopt the FRS 39 tax treatment at any time by writing to the Comptroller to revoke the election (s 34A(5)). Such revocation is irrevocable (s 34A(6)).

Taxpayers not required to comply with FRS 39

The pre-FRS 39 tax treatment will continue to apply to:

(i) taxpayers who are not required to comply with FRS 39 for accounting purposes, or

(ii) companies that are temporarily exempt by the Accounting and Corporate Regulatory Authority (ACRA) from complying with FRS 39.

Pre-FRS 39 tax treatment of financial instruments

Before the adoption of FRS 39, any gains or losses arising from the disposal of financial assets on capital accounts are not taxable or deductible. Similarly, any provision for the diminution in the value of such capital assets is not deductible.

For gains or losses arising from the disposal of financial assets on revenue accounts, only realised gains or losses are taxable or deductible. An exception is a tax deduction allowed for the provision for diminution in the value of financial assets on revenue account. However, any subsequent write-up to the cost would be brought to tax.

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In the case of financial liabilities, interest expenses would be deductible if the conditions in s 14(1) are satisfied. For financial liabilities that do not constitute an accretion to capital, any discount incurred would be deductible while any premium would be taxable.

(For details of the new tax treatment and the pre-FRS 39 tax treatment, see s 34A and IRAS e-Tax Guide "Income Tax Implications Arising from the Adoption of FRS 39 — Financial Instruments: Recognition & Measurement" (Revised Ed), published on 29 June 2012.)

Amendment of s 34A consequent upon adoption of SFRS for Small Entities

To provide for changes to the basis of computing profits of financial instruments arising from the adoption of Singapore Financial Reporting Standard (SFRS) for Small Entities by companies in Singapore, s 34A was amended effective from 1 January 2011. An amount to be brought into account for any financial instrument of a person who prepares his accounts in accordance with the SFRS for Small Entities is that which, in accordance with that SFRS, is recognised in determining the profit, loss or expense for that instrument.

The company may elect not to be subject to such treatment, and subsequently opt to be subject to it by revoking the election. The right of election is not available to persons who are already subject to the tax treatment under s 34A (whether as regards FRS 39 or SFRS for Small Entities) because they had earlier failed to make the election or had revoked their election.

¶4-800 Tax filing requirements of businesses with non-S$ functional currencies

Businesses are required to measure their results and assess their financial position in their functional currency in accordance with FRS 21. The functional currency is defined as the currency of the primary economic environment in which the entity operates. This means that financial accounts and statements can be prepared in functional currencies other than S$.

Companies that maintain their financial accounts in non-S$ functional currencies are required to file their income tax computations together with the accompanying financial statements in their non-S$ functional currencies (s 62B(1)). All items in their tax computations up to the chargeable income should be in their non-S$ functional currencies.

Sole proprietors and partnerships who maintain their financial accounts and prepare their financial statements in non-S$ functional currencies are also required to file their tax computations and financial statements in their non-S$ functional currencies (s 62B(1)):

(i) For sole proprietors, all items in the tax computations up to the adjusted income or loss and capital allowances for that trade or business (but before any losses brought forward) should be in their non-S$ functional currencies.

(ii) For partnerships, all items in the computations up to the allocated profit or loss and capital allowances should be in their non-S$ functional currencies.

Even though businesses with non-S$ functional currencies are required to submit their tax computations in their non-S$ functional currencies, they must still declare any information (ie amounts) required in any return of income in S$ (s 62B(5)). To comply with this requirement, businesses are required to translate the relevant items into the S$ equivalent amounts, using the applicable exchange rate(s).

Transitional provisions apply generally to businesses which in previous YAs had furnished their tax computations and particulars of income with their tax returns in S$. These provisions set out how specific items reflected previously in S$ were to be converted into functional currencies.

(See s 62B, IRAS e-Tax Guide "Filing of Income Tax Computations in Functional Currencies other than Singapore Dollars", published on 29 June 2012, and the transitional provisions prescribed pursuant to s 62B(11) in the Income Tax (Functional Currency) Regulations 2004.)

¶4-900 Income tax treatment of virtual currencies

The IRAS has published its position concerning the income tax treatment of virtual currencies. The information below is taken from the IRAS website (www.iras.gov.sg), last updated on 27 January 2014.

Businesses that choose to accept virtual currencies such as Bitcoins for their remuneration or revenue are subject to the normal income tax rules. They will be taxed on their income derived from or received in Singapore. For deductibility aspects, the normal rules set out in Chapter 7 apply.

Businesses that buy or sell goods or services using virtual currencies

Generally, businesses that accept virtual currencies as payment for goods or services should record the sales based on the **open market value** of the goods or services in S$.

Similarly, businesses which pay for goods or services using virtual currencies should record their purchases based on the **open market value** of the goods or services in S$.

If the **open market value** of the goods or services that would have otherwise been exchanged in S$ cannot be determined (eg the goods or services are traded only in virtual currencies), the virtual currency exchange rate at the point of the transaction may be used.

Businesses that buy and sell virtual currencies

Businesses that buy and sell virtual currencies in the ordinary course of their business will be taxed on the profit derived from trading in the virtual currencies. Profits derived by businesses which mine and trade virtual currencies in exchange for money are also taxable.

Businesses that buy virtual currencies for long-term investment purposes may enjoy a capital gain, which is not taxable, from the disposal of these virtual currencies.

The badges of trade apply similarly to determine whether the gains from the disposal of virtual currencies are trading gains or capital gains (see ¶4-200).

For the goods and services tax (GST) treatment of virtual currencies, see Chapter 21.

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CHAPTER 5

EMPLOYMENT INCOME AND PENSIONS

NATURE OF EMPLOYMENT INCOME

¶5-110 Source of employment income

Gains or profits from any employment which accrue in or are derived from Singapore are taxable in Singapore (s 10(1)(b) of the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act")). Foreign employment income received in Singapore is exempt in the hands of the individual.

The income from any employment exercised in Singapore is deemed to be derived from Singapore (s 12(4)). If the services of an employee are performed in Singapore, the employment income is treated as having a source in Singapore. This is regardless of where the contract is concluded, where the income is received, who the employer is, or where the employer is located.

If an employee is required to travel overseas as part of the duties of his Singapore employment, the overseas duties are regarded as an extension of the Singapore employment. For example, in the course of his work, the Chief Accountant of a group of Singapore companies may be required to travel to countries in which the subsidiaries are located. As another example, a marketing executive may be required by his employer, a Singapore company, to travel abroad from time to time to clinch deals. The performance of these overseas duties will be incidental to his Singapore employment and the income from it will be regarded as derived from Singapore. On the other hand, an engineer who is seconded by his employer to work for an overseas subsidiary on a one-year assignment is likely to have entered into a separate contract with the subsidiary and come under its payroll. He would be regarded as exercising a separate employment overseas, and the employment income derived from the assignment will be foreign-sourced.

¶5-120 Characteristics of an employment

In an employment, there is usually a master–servant relationship. There is control by the employer in respect of the manner in which the employee is to conduct his work. In other words, there is a contract of service. This is in contrast to a contract for service, in which a person is engaged to perform certain services but is otherwise free to decide how those services are performed. Thus, an in-house tax accountant who provides tax advice for his company is an employee. On the other hand, an accountant who is engaged by a client company to provide tax advice in his independent capacity would have entered into a contract for service. The distinction between a contract of service and a contract for service corresponds broadly to that between employment and self-employment (which includes profession for tax purposes).

For tax purposes, an "employee" includes a director of a company, and the chairman and any member of a statutory board (s 2(1)).

¶5-130 Employment distinguished from profession

Unlike an employment, a profession involves the making of a series of engagements or successive engagements. In the United Kingdom (UK), an actress' engagement has been regarded as a mere engagement in the course of exercising a profession (*Davies v Braithwaite* (1931) 18 TC 198).

Some factors in deciding whether a profession or an employment is exercised are:

- the degree of control over the manner in which the work is performed
- whether the person provides his tools or hires his own helpers
- the degree of financial risk undertaken, including bearing losses from bad management, and
- the degree of responsibility undertaken (*Market Investigations v Minister of Social Services* (1969) 2 QB 173).

The distinction between a profession and an employment is important for several reasons:

(a) The income derived by a non-resident individual from exercising a short-term visiting employment in Singapore (other than as a company director) for not more than 60 days in the year preceding the year of assessment (YA) is exempt

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from tax (s 13(6)). This exemption does not apply to income taxable under s 10(1)(a). It is understood that the Inland Revenue Authority of Singapore (IRAS) applies this 60-day exemption rule only to a non-resident employee whose employment in Singapore does not straddle three or more calendar years.

(b) Deduction for bad debts is allowed only to a person who is carrying on a trade, business, profession or vocation (s 14(1)(d)).

(c) Only a person carrying on a trade, business or profession qualifies for capital allowances on capital expenditure that is incurred on the provision of machinery or plant (s 19(1)).

(d) Only losses arising from a trade, business, profession or vocation can be deducted against statutory income or be carried forward (s 37(3)(a)).

(e) Only a non-resident employee as defined in s 40B(5) may qualify for the s 40B relief. Under s 40B, the employment income derived by a non-resident individual from an employment in Singapore is subject to tax at 15% or at rates applicable to residents, whichever gives the higher tax liability. Section 40B, however, does not apply to a company director or to income that is taxable under s 10(1)(a).

Section 40B would normally apply to a non-resident employee who exercises an employment in Singapore for a period of more than 60 days but less than 183 days in the year preceding the YA.

GAINS OR PROFITS FROM EMPLOYMENT

¶5-200 Gains or profits from employment

Section 10(2) defines the expression "gains or profits from any employment" in s 10(1)(b) as:

"(a) any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance (other than a subsistence, travelling, conveyance or entertainment allowance which is proved to the satisfaction of the Comptroller to have been expended for purposes other than those in respect of which no deduction is allowed under section 15) paid or granted in respect of the employment whether in money or otherwise;

(b) the value of any food, clothing or lodging provided or paid for by the employer;

(c) for the year of assessment 2014 and any preceding year of assessment, the annual value of any place of residence provided by the employer and for the purposes of this paragraph—

(i) if the remuneration received by a director of a company is less than the annual value of the premises, the full annual value shall be deemed to be gains or profits of the employment;

(ii) except as provided in sub-paragraph (i), if the annual value of the premises exceeds 10% of the gains or profits from the employment mentioned in paragraphs (a) and (b) less the rent, if any, paid by the employee for the use of the premises, the excess shall be disregarded;

(iii) where the premises are shared, "place of residence" means the part of the premises occupied by the person chargeable;

(ca) for the year of assessment 2015 and subsequent years of assessment, the annual value of any place of residence provided by the employer (or the part thereof occupied by the employee if the premises are shared with another) less the rent (if any) paid by the employee for the use of the premises;

(d) any sum standing to the account of any individual in any pension or provident fund or society which the individual is entitled to withdraw upon retirement or which is withdrawn therefrom."

Each of these paragraphs is examined below.

The IRAS has iterated that all gains and profits derived by an employee including all benefits, whether in money or otherwise, paid or granted to him in respect of employment, are taxable, unless they are specifically exempt from tax or are covered by an administrative concession. The benefits-in-kind that are tax exempt or covered by concession are listed in Table 3 in ¶5-900.

¶5-210 Section 10(2)(a)

At general law, based on the English case *Tennant v Smith* [1892] 66 LT 327, a benefit is taxable only if it is convertible or can be turned to pecuniary account. Income is what comes in to the taxpayer, not what saves his pocket (per Lord *MacNaughten* at 331). In *X v CIT* (1950–1985) MSTC 668, the Singapore Board of Review rejected the application of the *Tennant* principle in Singapore as s 10(2)(a) is worded differently from the UK provisions. Under s 10(2)(a), a benefit would be taxable as employment income if it has been paid or granted in respect of the employment, whether in money *or otherwise*.

For a benefit to be taxable, there is no requirement that the benefit has to be contractually provided for, or that the payer or grantor of the benefit has to be the employer or a related person. For example, tips given by a customer to a waiter for his efficient service are taxable to the waiter, even though the tips are gratuitous and the payer is a third party. A voluntary payment made to a sales executive for achieving his sales target is similarly taxable to him.

Based on *Hochstrasser v Mayes* (1960) 38 TC 673, a long-held view in Singapore was that, in order for a receipt or benefit to be granted in respect of the employment (and therefore taxable as employment income):

(i) it must refer to the services the employee renders by virtue of his office, and

(ii) it must be in the nature of a reward for services past, present or future.

In the Singapore case *ABB v CIT* (2010) MSTC ¶70-000, the High Court considered that the "reward for services" test is not the only applicable test for taxability (see ¶5-265).

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Section 10(2)(a) refers to wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance. The meaning of these words is now examined.

Wages and salary

Most employment income is wages and salaries. These items require little comment.

Leave pay

Leave pay refers to the salary paid to an employee for the duration of his leave. The general rules that relate to leave pay are as follows:

(a) If the leave pay entitlement is specified as a lump sum payable at a certain date, it accrues on that date.

(b) If there is no formal arrangement:

  (i) a payment in lieu of unconsumed leave accrues when it is received

  (ii) a payment in lieu of leave surrendered at the termination of employment accrues when it is received

  (iii) a payment made at the beginning of a period of leave as an advance payment is regarded as accruing evenly over the period of leave.

Example 1

If an employee received a sum of $3,000 on 1 December 2013 as an advance payment for the period of leave from that date to 31 January 2014, the income is regarded as accruing evenly for the two months. The employee will therefore be taxed on $1,500 for YA 2014 and $1,500 for YA 2015.

Fee

Director's fees are a common type of fee.

A director of a company is an "employee" for income tax purposes (s 2(1)). Director's fees are therefore taxable as employment income under s 10(1)(b). Employment income is derived from Singapore if the employment is exercised in Singapore (s 12(4)). Director's fees are regarded as sourced in Singapore if the company paying the fees is resident in Singapore. This is because, in such a case, the directors' duties in exercising the control and management of the business of the company are carried out in Singapore.

A doubt had formerly arisen as to whether director's fees paid by a non-resident company could be considered as sourced in Singapore to the extent that the fees are attributable to attendance at board meetings in Singapore under s 12(4) (such fees, being emoluments received by a company director, are not exempt under the 60-day rule in s 13(6) — see ¶5-700). The IRAS has clarified that fees paid by non-resident companies with no presence in Singapore to their directors purely in the capacity as directors will not be regarded as sourced in Singapore even if the directors may, on some occasions, conduct their meetings in Singapore. A company is said to have "no presence in Singapore" at all if the company does not have any permanent establishment (PE) in Singapore and does not carry on any trade or business in

Singapore (see IRAS e-Tax Guide "Clarification on the Tax Treatment of Director's Fees Derived by Non-Resident Directors of Companies that have No Presence in Singapore", first published on 9 March 2004 and revised on 1 December 2011).

Director's fees can be approved either in arrears or in advance. The latest IRAS e-Tax Guide sets out the different taxation treatment for each type of director's fees (see IRAS e-Tax Guide "Tax Treatment of Director's Fees and Bonuses from Employment" (2nd Ed), published on 12 September 2014). For the deductibility aspects, see Chapter 7 at ¶7-100ff.

Director's fees approved in arrears

Director's fees approved in arrears are fees approved after the directors have rendered the requisite services for the accounting year concerned, eg director's fees for the accounting year 201X that are voted and approved at an Annual General Meeting (AGM) held after the end of the accounting year 201X. The earliest date on which such directors' fees accrue will be the date the fees are voted and approved at the company's AGM. This is because, under the *Companies Act (Cap 50, 2006 Ed)*, director's fees must be disclosed to and approved by the members of the company before they can be paid to the director.

Example 2

Jason Tan, a Singapore resident, is a director of Singapore Sling Ltd, a Singapore resident company. His director's fee of $30,000 for the year ended 31 December 2014 was voted and approved at the company's AGM on 26 January 2015.

The director's fee will accrue to Jason on 26 January 2015 and is therefore taxable for YA 2016.

The IRAS envisages that there may be claims in some cases where the directors are not entitled to the fees approved in arrears on the date the fees were voted and approved at the company's AGM. The IRAS requires such claims to be supported by relevant documentation showing that the directors could enforce the payment of the fees on a date after the fees were approved at the AGM.

Director's fees approved in advance

Director's fees approved in advance are fees approved before the directors have rendered the requisite services for the accounting year concerned, eg director's fees for the accounting year 201X that are voted and approved at an AGM held before the end of the accounting year 201X.

For such director's fees, the director may not have rendered the requisite services for the accounting year concerned when the fees are approved at the company's AGM. The earliest date on which the director's fees accrue will be as and when the director renders his services.

Thus, the director will be entitled to the director's fees on a monthly basis if, based on the terms in the director's letter of appointment, he can enforce the payment of those fees on a monthly basis. If the director can, however, only enforce the payment of a portion of the director's fees (eg fees of $x per meeting attended), then $x of director's fees will be regarded as accruing to him for each of those meetings he has attended.

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Where the director is a non-resident individual, the director's fees are subject to withholding tax at the tax rate applicable for the YA that relates to the date on which the fees accrue (as set out above). Currently, this tax rate is 20% (see Chapter 13 at ¶13-100ff).

Commission

A commission derived in respect of an employment is taxable to the recipient. For example, an employee of an estate agent company receives from his employer a $5,000 commission for securing a buyer for a property whose owner (seller) has appointed his employer as agent. The commission will be taxable as employment income to him.

Bonus

Bonuses may be contractual or non-contractual. The IRAS has further clarified the taxation treatment of both types of bonuses (see IRAS e-Tax Guide "Tax Treatment of Director's Fees and Bonuses from Employment" (2nd Ed), published on 12 September 2014). For the deductibility aspects, see Chapter 7 at ¶7-100ff.

Contractual bonus

A contractual bonus is payable according to the terms of a contract of service or a bonus plan adopted by the employer and it cannot be rescinded by the employer without legal consequences. A contractual bonus accrues to an employee in the year specified by the contract or bonus plan, which is usually the year in which the employee performs his services. A contractual bonus paid in early 2015 for services rendered in 2014 would be taxable for YA 2015.

If, however, the employer's liability to pay a contractual bonus is dependent on conditions to be met in future, the bonus will accrue to the employee only when the conditions are met. Suppose that a contractual bonus declared for the year ended 31 December 2014 will be paid within 90 days from the year end, provided that the employee does not resign before the date of payment. In this case, the employee becomes entitled to the bonus only when it is paid because no contractual obligation to pay the bonus would have been created until the condition (that the employee does not give notice of his resignation before the date of payment) is met.

In some contracts, an employee is entitled to receive a bonus (eg inducement bonus) on the signing of a contract with the employer even before the stipulated conditions are met. If the conditions are subsequently not met, the employee will then be contractually required to return the bonus in full or in part. The IRAS has stated that such a bonus paid in advance will be considered income of the employee on the date of payment. If the employee subsequently returns the bonus in full or in part, the amount returned is considered as an adjustment of income in the year in which the amount is returned.

Non-contractual bonus

By contrast, a non-contractual bonus is a bonus that can be rescinded by the employer any time before its payment without any legal consequences. It accrues to the employee on the date that the bonus is paid because the employee has no right to enforce the payment until that date. For example, an employer informs his employees on 1 December 2014 of his decision to pay a non-contractual bonus for the year ended 31 December 2014 on 1 February 2015. In this situation, the employee becomes entitled to the non-contractual bonus on 1 February 2015, the date of payment.

Gratuity

The term "gratuity" is not defined in the Act. The *Little Oxford Dictionary* defines a gratuity as "money given in recognition of services". A gratuity is taxable under s 10(1)(b).

Perquisite

The term "perquisite" denotes something that benefits a person by going into his pocket. It may be in money or in kind. Reimbursements of personal expenses are therefore taxable to an employee as a perquisite. On the other hand, a mere reimbursement of necessary disbursements is not a perquisite (*Pook v Owen* [1970] AC 244). It would merely be a transfer of an expense burden to the employer. For example, if an audit assistant is reimbursed by his employer for the taxi fares he incurred in the course of conducting an audit for the employer's client company, the reimbursement does not represent a gain or profit to him from his employment.

Some common perquisites include:

- *Insurance premiums*

  Insurance premiums paid by an employer on an insurance policy under which the employee or the employee's family member is a beneficiary are taxable to the employee. In effect, this is a reimbursement of a personal expense. On the other hand, the IRAS has stated that insurance premiums paid by the employer where the employer is the beneficiary of the policy would be exempt from tax to the employee (see Item 9, Table 3 in ¶5-900).

- *Children's school fees*

  If an employer bears the school fees of the children of an employee on his behalf, this is a taxable benefit to the employee.

- *Dental and medical benefits.*

  Reimbursements of medical or dental expenses paid by the employer are, by concession, not taxable to the employee. The concession has been extended to cover both basic and non-basic medical/dental care of the employee, his spouse and children, but it does not apply where the expenses are for the employee's parents. The concession does not extend to allowances given for medical and dental expenses (see Item 2, Table 3 in ¶5-900).

- *Property discounts/staff discounts*

  Property discounts given by a property developer to an employee are taxable as income in respect of the employment. The taxable amount is the difference between the discount the employee gets and the discount that is given to third parties.

  From YA 2011, an IRAS concession applies for certain staff discounts on purchases of goods or services (see Item 17, Table 3 in ¶5-900).

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- *Gifts and voluntary payments*

  Gifts and voluntary payments are taxable if they are paid or granted in respect of the employmenr. If they are of a periodic or recurrent nature, they are more likely to be income. If they are one-off or are made by way of a present or testimonial on grounds personal to an employee, it is less likely that they are income (*Moorhouse v Dooland* (1954) 36 TC 1).

  In *Laidler v Perry* (42 TC 351), the issue was whether Christmas vouchers given to employees were taxable to them. A group of companies had adopted the practice of giving gift vouchers to employees every Christmas. The vouchers could be used at shops of the employees' choice for the purchase of goods up to £10. They were given to all employees without regard to their remuneration, personal circumstances or personality or the way in which they had carried out their duties. It was held that the gift vouchers were taxable as employment income because:

  (a) they were regularly made over several years to all employees

  (b) the employees had come to expect the gift as a regular thing that went with their service, and

  (c) the gifts were made with the object of obtaining some beneficial results for the company in future.

  Under the IRAS concessions (see Item 5, Table 3 in ¶5-900), such cash or non-cash gifts not exceeding the value of $200 would be exempt from tax. The threshold of $200 is applied on the basis of the value of each gift. Where the value of each gift exceeds $200, the full value of that gift is taxable.

- *Income tax borne by employer*

  If an employer bears an employee's income tax liability on his behalf, the benefit will be taxable to the employee (*Hartland v Diggines* 10 TC 247).

- *Club membership*

  (a) Corporate membership — entrance fees and subscription fees

  Since the company is the club member, the entrance fees to obtain the membership are not a perquisite to the employee.

  When an employee is allowed the use of the corporate membership solely for meeting and entertaining his employer's clients and associates, there is no personal benefit derived by the employee and he is not taxed on any part of the subscription fees (see Item 8(a), Table 3 in ¶5-900). However, if the employee is allowed the use of the club facilities for his personal enjoyment, the portion of the subscription fees that relates to the personal usage is in principle a taxable benefit.

  (b) Individual membership — entrance fees and subscription fees

  If the club membership is in the name of an employee, the employee is taxed on the full amount of the entrance fee unless the membership is held in trust for the employer.

  As for the subscription fees, the employee will be taxed only on the portion of the subscription fees that relates to his personal usage.

- *Subsidy, allowance or benefit to employee for the attendance of the employee's child at a licensed childcare centre*

  The above perquisite provided by an employer to the employee is tax exempt to the employee (s 13(1)(zb)).

The tax treatment of the following common perquisites is covered in ¶5-250:

(a) provision of motor car benefits to employees

(b) leave passages, and

(c) provision of interest-free or interest-subsidised loans to employees, including directors.

The gains or profits from stock options or a right or benefit under share ownership schemes granted to employees with effect from 1 January 2003 are deemed to be income under s 10(1)(b). Such gains or profits were treated as s 10(1)(g) income before 1 January 2003 (see ¶5-260).

Allowances

An allowance generally refers to a regular cash payment, which benefits the employee who is not required to account for it. An allowance is taxable, unless it is for subsistence, travelling, conveyance or entertainment and is proved to the satisfaction of the Comptroller of Income Tax (the "Comptroller") to have been expended on purposes other than those in respect of which deduction is prohibited under s 15.

The tax treatment of three types of allowances, namely:

- entertainment allowances
- relocation allowances (for expatriates in Singapore), and
- *per diem* allowances (paid to employees on business trips outside Singapore),

is set out below. The tax treatment of reimbursements is also contrasted.

(1) Entertainment allowance

If a sales executive is given an entertainment allowance of $500 and he spent $400 on entertaining customers, the balance of $100 is taxable to him. By contrast, if the employee had spent the $400 and the employer subsequently reimbursed him for this amount, the reimbursement is not taxable to him. This is because the employee has not derived any personal benefit.

(2) Relocation allowance

Allowances paid to an expatriate employee for his relocation to Singapore are taxable. The IRAS has listed the following examples of expenses that the expatriate can deduct against the relocation allowance:

- cost of airfare to bring him, his family and pets to Singapore
- freight/storage charges to move personal effects
- cost of temporary accommodation (ie hotel or serviced apartment) incurred before the commencement of employment, and

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- settling-in expenses (eg first purchase of beddings, kitchen appliances, subscription to broadband Internet access and enrolment for immersion programmes for expatriates).

The IRAS considered the following expenses as non-deductible items:

- personal expenses such as payment for meals, laundry and transport, and
- recurrent expenses after the initial settling-in period (eg ongoing storage costs incurred for storing personal effects during the period of employment in Singapore).

The excess of relocation allowance over relocation expenses is taxable. On the other hand, if the relocation expenses claimed exceed the relocation allowance granted, the excess is not allowed to be set off against other income.

Where the Singapore employer reimburses an expatriate for relocation expenses incurred, the IRAS has stated that the reimbursement is not taxable as the expatriate does not derive a personal benefit. However, a reimbursement of loss incurred on the disposal of personal assets resulting from the relocation is taxable because:

- the reimbursement of the loss was made in respect of employment (as a consequence of the employer–employee relationship), and
- the expatriate derives a personal benefit in terms of obtaining an indemnity against personal loss in having sold his personal assets at a lower price.

(3) *Per diem* allowance

A *per diem* allowance refers to the daily allowance given to employees on overseas trips (ie outside Singapore) for business purposes. This payment is usually made when employees travel overseas to meet clients or to attend training and conferences. The allowance is meant to cover certain living expenses incurred overseas such as the cost of meals, transport and other incidental items like laundry.

Where the employer gives *per diem* allowances to the employees to cover these living expenses while on overseas business trips, such allowances would not be taxable if they are subsistence in nature. Allowances to buy warm clothing and luggage for business trips do not form part of the *per diem* allowances and are taxable (see also ¶5-220).

Each year, the IRAS publishes the annual acceptable subsistence rates by countries. Where the *per diem* allowances exceed the acceptable rate, the excess amount is taxable and the employer has to report that amount on the Form IR8A, the Return of Remuneration. Where the employer does not grant *per diem* allowances but reimburses the employees for their actual overseas business expenditure, the IRAS has stated that such reimbursements will not be taxable.

Note that the *per diem* allowances do not cover the payments for air tickets, overseas accommodation, airport transfers and travel between states/cities for business purposes. These payments are not taxable.

Example 3

For the year 2014, the acceptable rate for Japan is \$195 per day.

a) Kaisha Ltd paid Mr C \$150 per day when he went to Japan in 2014 for business meetings.

   Since the *per diem* allowance of \$150 is less than the acceptable rate of \$195, there is no taxable benefit.

b) Taka Ltd paid Mr D *per diem* allowance of \$250 per day when he went to Japan in 2014 to meet clients. Mr D received \$1,500 for the six days that he was in Japan.

   The amount in excess of acceptable rate per day = \$250 – \$195 = \$55.

   The taxable amount is therefore = \$55 × 6 = \$330.

Source: IRAS website www.iras.gov.sg

¶5-220 Clothing, food and lodging — s 10(2)(b)

Clothing

Clothing provided or paid by the employer is a taxable benefit. In practice, the IRAS does not tax the value of protective clothing worn by workers in certain industries or the value of uniform worn by employees to identify or project an image of the employer (eg company uniform worn by lift attendants or bank tellers) (see Item 13, Table 3 in ¶5-900).

Where the concessions do not apply, the taxable value of clothing would be its realisable value (resale value) and not the cost incurred by the employer (*Wilkins v Rogerson* (1961) 1 Ch 133). Under current IRAS treatment, the benefit may be exempt subject to some conditions — see ¶5-900.

Where an employee is given an allowance to buy warm clothing or luggage for his overseas business travel, the allowance is fully taxable. However, the IRAS has stated on its website at www.iras.gov.sg that any reimbursement by the employer for the actual cost of the warm clothing or luggage would not be taxable.

Food

Meals provided by an employer can generally be consumed only by the employee. In principle, their taxable value would be cost to the employer. The general rule under s 10(2)(b) is that "the value of any food . . . provided or paid for by the employer" is taxable as employment income unless exempt or granted an administrative concession. By concession, free or subsidised food and drinks that are generally available to all employees would not be taxable. The concession, however, does not apply to meal reimbursements and meal vouchers where the benefit is for specific employees. The IRAS has clarified on its website at www.iras.gov.sg that overtime meal reimbursements are not taxable if they:

- are paid to employees for working beyond official working hours on an ad hoc basis, and
- are generally available to all staff

  (see Item 14, Table 3 in ¶5-900).

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Lodging

Lodging connotes a temporary place to stay in, unlike the provision of a place of residence, which is the subject of s 10(2)(c) (*Isaacs v C of T* [1916] St R Qd 95 at 106). A lodging allowance is fully taxable.

Hotel accommodation

The tax treatment of the provision of hotel accommodation (which includes a serviced apartment within a hotel building) based on IRAS' practice is set out below. The tax treatment of the provision of non-hotel accommodation is governed by s 10(2)(c) of the Act and is set out in ¶5-230.

Position up to YA 2014

Up to YA 2014, the value of hotel accommodation provided by an employer to an employee and the employee's family is based on the following scale rates:

- $250 per month per adult
- $250 per month per child over 20 years old
- $100 per month per child between eight to 20 years old
- $50 per month per child between three to seven years old, and
- $25 per month per child under three years old.

A further 2% of the employee's basic salary for the period of provision of hotel accommodation is added.

Where any amount is paid by an employee towards the hotel accommodation, it is deducted in calculating the taxable benefit in his hands.

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Example 4

Mr Cruise commenced employment in Singapore on 1 October 2013 with Mirror Ltd. His annual salary is $100,000. On his arrival in Singapore, he, his wife and their two-year-old son, Patrick, were provided with hotel accommodation for three months (from 1 October to 31 December 2013) at the Mandarin Hotel. He was also paid a contractual bonus of $5,000 on 31 December 2013. His employment income for YA 2014 will be:

	$	$
Salary (1 October to 31 December 2013)		25,000
Bonus		5,000
		30,000
Hotel benefit:		
Self @ $250 per month	750	
Wife @ $250 per month	750	
Child @ $25 per month	75	
2% of $25,000	500	2,075
Total employment income		32,075

Position from YA 2015

From YA 2015, the taxable value of hotel accommodation enjoyed by an employee (including a company director) will be the **actual cost** incurred for the hotel stay, **less any amount paid** by him (see IRAS website at www.iras.gov.sg/irasHome/print.aspx).

¶5-230 Place of residence provided by the employer — s 10(2)(c)

Position up to YA 2014

Up to YA 2014, the taxable benefit of non-hotel accommodation (which includes a serviced apartment not within a hotel building) provided to employees depends on whether they were directors or not. The tax treatment is set out below.

Provided to a non-director employee

Where a non-director employee is provided with such accommodation by his employer, the taxable value of the accommodation is the lower of:

- 10% of the gains or profits from the employment mentioned in s 10(2)(a) and 10(2)(b), less any rent paid by the employee for the use of the premises, or
- the annual value (AV) of the premises (s 10(2)(c)(ii)).

If the employer owns the property, the AV is the estimated annual rent of the property let out on an unfurnished basis. The AV is indicated on the property tax bill issued by the Comptroller of Property Tax.

If the residence is a rented property and the employer does not know the AV of the property, the rent paid by the employer for the unfurnished premises (ie gross rent paid by the employer less rental for furniture and fittings) may be used to approximate the AV.

Based on the examples on the IRAS' website (www.iras.gov.sg/irasHome/print.aspx), it appears that the IRAS would, in practice, calculate the taxable benefit of the provision of non-hotel accommodation as follows:

- the lower of the AV of the premises or 10% of the gains or profits from the employment mentioned in s 10(2)(a) and 10(2)(b)
- less rent paid by the employee.

Example 5

For the year 2013, John, a senior accountant, earned remuneration* of $150,000 and was provided with unfurnished accommodation (AV = $48,000). Monthly deductions of $700 were made from John's salary towards the rental. Based on IRAS' practice, the taxable benefit of the accommodation to John for YA 2014 will be $6,600, being:

(i) the lower of $48,000 (AV of the premises) or 10% of $150,000

(ii) less rent paid by John of $8,400, ie ($700 × 12).

* The term "remuneration" refers to the gains or profits from John's employment under s 10(2)(a) and 10(2)(b).

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Where the premises are shared by two or more employees, the AV computed for each employee is the AV in the above formula divided by the number of employees sharing the premises (s 10(2)(c)(iii)).

Provided to a director

The valuation of non-hotel accommodation provided to a director is as follows (s 10(2)(c)(i)):

(a) Where the director's remuneration is less than the AV of the premises, the taxable value is the AV of the premises.

(b) Where the director's remuneration equals or exceeds the AV of the premises, the taxable value is the same as that for a non-director employee.

Example 6

(a) Gail, a director of Merrilands Company, is paid a remuneration of $370,000 and provided with premises for one year (AV = $60,000).

The taxable benefit of the accommodation to Gail would be limited to $37,000 (ie 10% of $370,000).

(b) If Gail's remuneration is $50,000 instead, the taxable benefit of the accommodation would be $60,000 (ie AV).

(c) If Gail is provided only with free accommodation, the taxable benefit of the accommodation would be $60,000 (ie AV).

Position from YA 2015

From YA 2015, the taxable value of non-hotel accommodation provided to any employee (including a company director) will simply be the AV of the premises **less rent paid** by the employee. Where the employee shares the premises with others, only the proportionate amount of the AV will be taken into account (s 10(2)(ca)).

If no AV or separate AV is ascribed to the non-hotel accommodation (ie the house or building provided) in the Valuation List prepared under s 10 of the *Property Tax Act (Cap 254, 2005 Revised Ed)*, the AV will be its market rent (more precisely, the gross amount at which the non-hotel accommodation can reasonably be expected to be let from year to year, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all taxes except goods and services tax) (s 10(2A)).

The IRAS has also clarified that where an employee signs a rental agreement but the employer pays the rent to the landlord, this is treated as a **housing allowance** and the full rent paid by the employer is taxable. This position applies before, and will continue to apply from, YA 2015.

Furniture and fittings

Position up to YA 2014

Up to YA 2014, where an employer provides an employee with furnished accommodation, the IRAS scale rates for calculating the taxable benefit of the furniture and fittings provided are as follows:

		Value per unit per month $
Air-conditioner (unit)		10.00
Air-conditioner (central)	— dining room	15.00
	— living room	15.00
	— additional room	10.00
Air cooler		1.00
Air purifier		10.00
Blender/juicer/coffee maker/kettle		3.00
Camera		Actual amount paid by employer
Clothes dryer		15.00
Coffee maker		3.00
Computer (printer is considered as part of the computer)		40.00
Cooker		2.50
Dishwasher		15.00
Dryer		15.00
Electric guitar		30.00
Fan		1.00
Fax machine		
(a) Employee pays for the recurring telephone charges linked to the use of the machine		20.00
(b) As in (a) and employee gets to keep the machine		Full cost of the machine incurred by the employer in the year of purchase
(c) Employer pays for the recurring telephone charges linked to the use of the machine		20.00 + telephone bill paid by employer for the year
(d) As in (c) and employee gets to keep the machine		Full cost of the machine incurred by the employer in the year of purchase and telephone bill paid by the employer
Floor polisher		4.00
Furniture — hard or soft		10.00 (regardless of the number of units provided)
Home entertainment theatre		30.00
Golf bag and accessories		Actual amount paid by the employer
Hi-fi stereo/radio/amplifier		30.00
Iron		1.00
Jet-steam oven		2.50
Lawn mower		5.00
Light fittings (eg standing lamps/lights; installed lights are not included)		1.00
Organ		40.00
Refrigerator		10.00
Suitcase		Actual amount paid by employer

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	Value per unit per month $
Surveillance system	30.00
Swimming pool	100.00
Television (including plasma TV, high definition TV)	30.00
Toaster	1.00
Vacuum cleaner	2.00
Video recorder/DVD player/VCD player	20.00
Washing machine	15.00
Water heater	2.50

(The above list is not exhaustive.)

Position from YA 2015

From YA 2015, the valuation of taxable benefit in the form of furniture and fittings provided by the employer to an employee (including a director) will depend on whether the premises is partially or fully furnished.

The taxable value will be:

- **40% of the AV** if the premises is *partially furnished* (ie only fittings are provided, eg lighting, air-conditioner, ceiling fan and water heater), and
- **50% of the AV** if the premises is **fully furnished** (ie both fittings and furniture/household appliances are provided).

The use of the 40% and 50% figures was determined based on input collated from a survey conducted on industry practice on the provision of furniture and fittings. The IRAS has also clarified that the provision of a partially furnished unit (eg one that comes with one or more items of fittings) will give rise to the same taxable benefit as 40% of the AV.

As an administrative concession, the IRAS will allow an employer to choose to report the market rent paid for the furnished unit instead of using the AV. An employer who chooses to use the actual rent paid for this purpose must, however, report the full rent paid for the premises (including the furniture and fittings) as well; he cannot use the actual rent to value the provision of furniture and fittings, but the AV to value the provision of accommodation.

The Minister for Finance (the "Minister") may, by regulations, prescribe the value of any furniture and fittings in the non-hotel accommodation for any YA as he may specify (s 10(2B)).

Other related benefits

The taxable amounts of the following benefits are:

- PUB (utilities), telephone and cable bills — actual amount paid by the employer (this tax treatment applies before and from YA 2015)
- provision of a household servant — actual wages paid by the employer (this tax treatment applies before and from YA 2015)

- provision of a gardener — $35 per month or the actual wages paid to the gardener, whichever is the lower (this tax treatment applies up to YA 2014. From YA 2015, the taxable value will be the actual wages paid by the employer).

For numerical examples showing how the taxable value is to be calculated in situations in which

(1) two or more employees share the accommodation

(2) fully furnished accommodation is provided only for part of the year, or

(3) there has been a change to the AV during the year,
please refer to the IRAS website www.iras.gov.sg.

Examples 12 and 13 illustrate, by way of contrast, how the tax rules for YA 2014 and YA 2015 apply respectively (see ¶5-800).

¶5-240 Contributions to and withdrawals from pension and provident funds — s 10(2)(d)

The expression "gains or profits from any employment" is defined to include any amount standing in an employee's account in any pension or provident fund, which the employee is entitled to withdraw upon retirement or which has been withdrawn therefrom (s 10(2)(d)).

For tax purposes, pension and provident funds can be categorised as follows:

Local

(a) Central Provident Fund (CPF)

(b) approved designated pension or provident fund (ADPPF)

(c) approved non-designated pension or provident fund

(d) unapproved pension or provident fund

Overseas

(e) overseas pension or provident fund (mandatory and non-mandatory)

(a) CPF and (b) ADPPF

The same tax treatment applies to the contributions made by employers to their employees' own accounts in the CPF or an ADPPF.

Tax exemption applies to sums standing in an employee's account in the CPF or an ADPPF, or to amounts withdrawn therefrom (except Singapore dividends credited to his CPF Investment Account) (s 13(1)(j)). This means that the statutory contributions by employers in accordance with the *Central Provident Fund Act (Cap 36, 2001 Ed)* (the "CPF Act") or the constitution of the ADPPF are not taxable in the hands of the employees. However, where an employer contributes in excess of the statutory requirements, the excess contributions to the CPF or ADPPF are taxable to the employee — see below.

From 1 September 2011, the monthly "ordinary wages" ceiling for CPF contributions for private sector employees is capped at $5,000.

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For 2012 and every subsequent year to 2015, therefore:

(i) the total amount of ordinary wages subject to statutory CPF contributions is $60,000 (ie $5,000 × 12)

(ii) the total wages subject to statutory CPF contributions are capped at $85,000 (ie based on 17 months of ordinary wages) (First Schedule, CPF Act), and

(iii) the amount of additional wages that is subject to statutory CPF contribution is the difference between (i) and (ii), ie $25,000 ($85,000 – $60,000).

"Ordinary wages" refer to wages due or granted wholly and exclusively in respect of employment for any particular month, including overtime pay and allowances.

"Additional wages" refer to wage supplements that are not granted wholly and exclusively for the month, eg a year-end bonus or an annual performance bonus.

The CPF contribution rates for employer and employee in respect of Singapore citizen employees up to 55 years of age (with monthly wages above $1,500) are set out in Table 1. Note that different rates of contributions apply to monthly wages below $1,500 and to those aged above 55 years.

2015 Budget announcement

From 1 January 2016, the CPF monthly salary ceiling will be raised from $5,000 to $6,000. This is to help middle-income Singaporeans accumulate more CPF savings for their retirement.

From 2016, therefore:

(i) the total amount of ordinary wages subject to statutory CPF contributions will be $72,000 (ie $6,000 × 12)

(ii) the total wages subject to statutory CPF contributions will be capped at $102,000 (being $6,000 × 17), and

(iii) the amount of additional wages that will be subject to statutory CPF contributions is the difference between (i) and (ii), ie $30,000 ($102,000 – $72,000).

Table 1: CPF contribution rates for employees up to 55 years old

CPF contribution rate	*Employee (aged not more than 50 years)*		*Employee (aged above 50 to 55 years)*	
	Employer	*Employee*	*Employer*	*Employee*
From 1 January 2016 (2015 Budget announcement)	17%	20%	17%	20%
From 1 January 2015	17%	20%	16%	19%
From 1 September 2012	16%	20%	14%	18.5%
From 1 September 2011	16%	20%	12%	18%
From 1 March 2011 to 31 August 2011	15.5%	20%	11.5%	18%

CPF contribution rate	Employee (aged not more than 50 years)		Employee (aged above 50 to 55 years)	
	Employer	Employee	Employer	Employee
From 1 September 2010 to 28 February 2011	15%	20%	11%	18%
From 1 July 2007 to 30 August 2010	14.5%	20%	10.5%	18%

Example 7

In 2015, Michael Ker's monthly ordinary wages are $8,000. He is 45 years old. The statutory monthly CPF contribution to be made by his employer will be:

17% × $5,000 = $850

If his additional wages (eg comprising a year-end bonus) of $30,000 were paid in December 2015, the statutory CPF contributions on additional wages would be $4,250 (ie 17% × $25,000 ($85,000 – $60,000)).

CPF contributions by more than one employer

Where:

(i) CPF contributions have been made in respect of an employee employed by two or more employers, and

(ii) the employers are related to each other,

all the ordinary and additional wages from the related employers and the contributions on those wages are treated as paid by one employer for purposes of determining the amount of excess CPF contributions (s 10C(8)).

An employer is deemed to be related to another employer if one of them, directly or indirectly, is able to control the other or if both of them, directly or indirectly, are under the control of a common person (s 10C(9)).

Medisave contributions

Up to 2012, annual contributions up to $1,500 made by an employer to the CPF Medisave account of an employee will not be deemed income to the employee (s 10C(4)). Where two or more employers make Medisave contributions to the same individual in a year, the maximum amount of Medisave contributions not deemed to be income to that employee for that year is restricted to $1,500.

From 1 January 2011, the annual cap of $1,500 above includes:

(i) any previous contribution made by the same or another employer to that Medisave account in that year that is not deemed income under s 10C(4), and

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(ii) any previous voluntary contribution in cash made to that Medisave account in that year as a self-employed individual that is tax exempt under s 13(1)(jc).

All contributions made to the Medisave account of any employee holding a professional visit pass, employment pass or work permit are fully taxable to the employee (s 10C(6)).

From 2013, annual contributions up to $1,500 less any previous contribution made to the Medisave account of an employee by an employer in his capacity as a person of a prescribed description referred to in s 13(1)(jd) (if applicable) that is exempt from tax in s 13(1)(jd) will not be deemed income to the employee (s 10C(5A) and 10C(5B)).

Certain contributions to CPF made by Government

Certain CPF contributions made by the Government in respect of an individual are tax exempt (see Chapter 6 at ¶6-950).

Employer's excess CPF contributions

Due to the exemption given in s 13(1)(j), employers in the past made CPF contributions for their employees in excess of CPF statutory rates to minimise the employees' tax liability. Section 10C was enacted to close this tax loophole by treating excess CPF contributions as taxable income for the year the wages are paid. Section 10C applies also to excess contributions made to an ADPPF.

Notwithstanding the s 13(1)(j) exemption for sums standing to the employee's CPF account or withdrawn therefrom, the following CPF contributions made by an employer in respect of an employee are deemed income to the employee for the year in which the wages are paid:

(a) any part of the employer's contributions in respect of ordinary or additional wages paid to the employee in that year, which is not obligatory under the CPF Act, or

(b) the employer's contributions in respect of that part of the additional wages which exceeds the specified amount paid to the employee in that year (s 10C(1)).

For 2012 and every subsequent year to 2015, the specified amount is $85,000 minus the total ordinary wages paid to the employee in that year; any amount of ordinary wages paid for any month in the year in excess of $5,000 will be disregarded.

If, in Example 7, Michael's employer contributed monthly CPF based on the full salary of $8,000, the excess CPF contributions of $6,120 (ie 17% × (12 × $3,000)) would be deemed income to Michael for 2015 (s 10C(1)).

If Michael's employer also contributed CPF on the full amount of his additional wages of $30,000 in December 2015, the excess CPF contribution of $850 (ie 17% of ($30,000 – $25,000)) would also be deemed income to him for 2015.

2015 Budget announcement

The CPF monthly salary ceiling will be raised from $5,000 to $6,000 from 1 January 2016. From the year 2016, the specified amount will therefore be $102,000 (being $6,000 × 17) minus the total ordinary wages paid to the employee in that year; any amount of ordinary wages paid for any month in the year in excess of $6,000 will be disregarded.

CPF contributions in respect of overseas wages

Where under an employment contract, an employer is obliged to make CPF contributions on overseas wages or overseas additional wages, such contributions up to the "relevant amount" in any year will not be taxable to the employee (s 10C(2)). However, an employer's CPF contributions in any year in respect of an employee who holds a professional visit pass, an employment pass or a work permit in that year are fully taxable to the employee (s 10C(3)).

For 2012 and every subsequent year to 2015, the "relevant amount" is the lower of:

(i) the amount of contributions which would have been obligatory under the CPF Act in respect of the overseas total wages paid to the employee in any year, less the total in that year of such part of the overseas ordinary wages paid to the employee in every month in that year which exceeded $5,000, or

(ii) $85,000.

"Overseas ordinary wages" means ordinary wages paid in respect of the performance of any duty for any period outside Singapore.

"Overseas additional wages" means additional wages paid in respect of the performance of any duty for any period outside Singapore.

"Overseas total wages", in relation to any year, means the total of the overseas ordinary wages and overseas additional wages in that year received by an employee (s 10C(12)).

2015 Budget announcement

The CPF monthly salary ceiling will be raised from $5,000 to $6,000 from 1 January 2016. From the year 2016, the "relevant amount" will therefore be the lower of:

(i) the amount of contributions which would have been obligatory under the CPF Act in respect of the overseas total wages paid to the employee in any year, less the total in that year of such part of the overseas ordinary wages paid to the employee in every month in that year which exceeded $6,000, or

(ii) $102,000.

(c) and (d) Pension or provident funds other than CPF and ADPPF (ie approved non-designated, and unapproved, pension or provident funds)

The sum standing to the account of any individual in any pension or provident fund (*other than* CPF and ADPPF) is deemed to accrue to him on the date he is entitled to the sum upon retirement or on the date he withdraws any sum before retirement, as

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the case may be. If, however, upon retirement, the individual is entitled to elect under the rules or constitution of the pension or provident fund to withdraw any amount, only the amount withdrawn is deemed to be income to him accruing on the date of withdrawal (s 10(2)(d) and 10(24)).

Tax exemption applies to:

(i) sums standing to an individual's account in an **approved** pension or provident fund (not CPF or an ADPPF) as at 31 December 1992, and

(ii) interest on that sum as the Comptroller may determine for the period 1 January 1993 to the date of his retirement and which are withdrawn only upon or after his retirement according to the rules or constitution of the fund (s 13(1)(ja)).

For an **unapproved** pension or provident fund, the IRAS may exempt the amounts withdrawn upon retirement to the extent that the amounts accrued before 1 January 1993 if:

(a) the fund plan had existed before 26 February 1993

(b) the retirement benefits were available to all staff

(c) the same formula for computing retirement benefits was used for all staff, and

(d) the benefits provided were not more generous than the most generous benefits provided under any approved pension or provident fund.

(See IRAS e-Tax Guide "Implementation Details of the Announced Changes to the Tax Treatment of Retirement Benefits for Employees", published on 12 July 1993.)

(e) Employers' contributions to overseas pension or provident fund

Contributions made by an employer in respect of an employee to any overseas pension or provident fund are taxable to the employee for the year in which the contributions are made (s 10C(11)).

In practice, however, an employer's contribution to any **approved mandatory** overseas pension fund or social security scheme is not taxable to the employee in the year of contribution if the employer does not claim a deduction for such contribution made. However, this treatment is granted on a case-by-case basis.

As another exception, an employee who qualifies under the "Not Ordinarily Resident" (NOR) incentive is tax exempt on his employer's contributions made to any **non-mandatory** overseas pension fund, subject to a NOR cap. Detailed conditions apply (see ¶5-500).

¶5-250 Other perquisites

Provision of car and/or driver

Where an employer provides a car for an employee's use, the use of that car by the employee for private purposes is a perquisite and therefore a taxable benefit. The apportionment between private and business use is normally made on the basis of mileage. Private use includes travelling between home and the place of work.

The taxable benefit is valued as follows:

(a) Car provided by employer and cost of petrol borne by employee:

$$\frac{3}{7}\left[\frac{\text{car cost} - \text{residual value}}{10}\right] + (\$0.45 \text{ per km} \times \text{private mileage})$$

(b) Car provided by employer and cost of petrol borne by employer:

$$\frac{3}{7}\left[\frac{\text{car cost} - \text{residual value}}{10}\right] + (\$0.55 \text{ per km} \times \text{private mileage})$$

where:

- "car cost" is the acquisition cost of the car (inclusive of cost of certificate of entitlement (COE)) paid or payable at the date of purchase
- "residual value" is 80% of the car's open market value for cars registered after 31 October 1990. For cars registered before 1 November 1990, the residual value is the amount of rebate allowable under the *Road Traffic Act (Cap 276, 2004 Revised Ed)*.

The above formula apply only where the employer is the first owner of the car.

Where an employer provides an employee with the use of a second-hand car, different formulae apply (see IRAS e-Tax Guide "Basis for Computing Taxable Car Benefit", published on 28 January 1995).

The taxability of other related car benefits is as follows:

- *Benefit of driver provided by employer*

  The formula is:

  Value of benefit = Annual cost of driver × (private mileage/total mileage)

- *Where employer only reimburses employee's car expenses*

  If an employer does not provide an employee with a car but reimburses the car running costs and maintenance expenses incurred by the employee, including the expenses incurred for private usage, the amount of reimbursed car expenses attributable to the employee's private usage is a taxable benefit. It is computed as follows:

  Value of benefit = private mileage/total mileage × car expenses reimbursed by employer

- *Where employer provides employee with a commercial vehicle and private use is allowed*

  If an employer provides an employee with a commercial vehicle or motorcycle/scooter for work and also allows the employee to use the vehicle for private purposes, the taxpayer is regarded as receiving a taxable benefit

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provided that the vehicle expenses are fully borne by the employer. The value of the benefit derived by the employee from the private usage of the vehicle is computed as follows:

(a) Commercial vehicle:

Value of benefit = \$0.55 per km × private mileage

(b) Motorcycle or scooter:

Value of benefit = \$0.20 per km × private mileage

See also Item 16, Table 3 in ¶5-900.

Home leave passages

In principle, the provision of home leave passages to an employee is a perquisite and the full cost is taxable to the employee.

Under an IRAS concession, the taxable benefit of home leave passages is computed as 20% of their value if the passages are to the employee's home country. The concession is limited to only one passage each for the employee and his spouse, and two passages for each child annually. The child must be unmarried and:

(a) under the age of 16 years at any time during the year preceding the YA

(b) if over 16 years old, be receiving full-time instruction at any university, college or school or other educational institution, or

(c) be incapacitated from maintaining himself by reason of physical or mental infirmity.

Singapore citizens and permanent residents do not qualify for the concession.

Passages provided to an expatriate employee and his family when the employee is first appointed to Singapore, and when the employee finally returns to his home country on the completion or termination of his employment contract, are not taxable. The provision of such passages does not constitute employment income.

Interest-free or subsidised loans to employees other than directors

Under current IRAS practice, the interest-free or interest-subsidy element of certain loans provided by an employer to a non-director employee is exempt from tax if the employee does not have substantial shareholdings in, or control or influence over, the company (see Item 10, Table 3 in ¶5-900).

Where:

(i) the employee obtains the loan himself, and

(ii) the employer either pays interest to the lender directly or reimburses the employee fully or partially for the interest,

the amount of the subsidy will be fully taxable on the employee.

Interest-free or subsidised loans to directors

In *NYK & Anor v CIT* (2001) MSTC 5,297, it was held that the interest-free element in the grant of interest-free loans to company directors constituted a perquisite to them under s 10(1)(b).

In that case, the two taxpayers were directors of a family-held company. They obtained interest-free loans from the company. The Comptroller taxed the deemed interest on these loans as employment income to them, and they objected. The Board of Review held that the taxpayers were directors and therefore employees under s 2(1) for tax purposes, and that they have obtained a perquisite, being the saving on the interest that would have been incurred if they had obtained the loans from a bank or a finance company.

In addition, the company incurred substantial costs in granting them these loans. The deemed interest therefore constituted employment income to them. The Comptroller's method of calculating the deemed interest using the lowest prime lending rate a bank would extend to its most creditworthy customers was accepted. The High Court upheld the Board's decision.

The IRAS treatment has subsequently been set out in its letter of 2 July 2002 to the Institute of Certified Public Accountants of Singapore (ICPAS) and in the e-Tax Guide "Benefits to Company Directors from Interest-free/Subsidised Loans", published on 7 November 2002.

In the letter and the e-Tax Guide, the IRAS took the view that interest-free or subsidised loans made to directors/shareholders in their capacity as directors constitute a taxable perquisite of an employment. Such loans, if made to them in their capacity as shareholders only, would not be taxable as employment income. Whether subsidised or interest-free loans are made to them as directors or as shareholders is a question of fact. The IRAS said that it would generally be prepared to accept that loans are given to directors/shareholders solely in their capacity as shareholders if all the following conditions are present in a loan arrangement between the company and them:

(a) there are *bona fide* (ie other than tax) reasons for the company to extend loans to directors/shareholders in their capacity as shareholders, instead of paying them dividends or returning excess capital to them

(b) the loans are not remuneration or benefits to directors disguised as loans to shareholders, or the loans are not intended to be a means for a company to pay dividends or return excess contributed capital to its shareholders, including directors/shareholders. In other words, where a loan is made, there must be evidence of a genuine intent for a creditor/debtor relationship to exist between the company and shareholders and the company can provide evidence to support that it has reasonable expectations of the loans being repaid

(c) the loans are extended to all shareholders rather than only those who are also directors, under similar loan terms and loan quantum determined on a similar basis. The loan quantum extended to each shareholder should be determined based on his respective shareholding in a company or other equivalent basis, and not due to the influence or position held by any director/shareholder in the company. The loan terms include repayment schedules and interest rate charged, if any. There should not be any arrangement made among shareholders of a company provided with loans such that loan proceeds obtained by one or more shareholders are subsequently diverted to other shareholders for the latter's use, and

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(d) contemporaneous documentary evidence in the form of directors' or board resolutions, approvals at shareholders' meetings, minutes of meetings or other records, etc, are available to support any claim that the loans are made to the recipients in their capacity as shareholders and not as directors.

The value of the taxable interest benefit is computed based on prime interest rate. For simplicity, the IRAS generally accepts a computation of the benefit based on the amount of loan outstanding as at 31 December of each year multiplied by the average prime lending rate for that year. If the loan was taken for less than one calendar year, the benefit would be computed according to the number of months in that year for which the loan remains outstanding.

(See IRAS e-Tax Guide "Benefits to Company Directors from Interest-free/Subsidised Loans", first published on 7 November 2002, revised on 12 September 2014.)

The IRAS has published the average prime lending rates for the following years:

Year	*Average prime lending rate (%)*
2014	5.35
2013	5.38
2012	5.38
2011	5.38
2010	5.38
2009	5.38
2008	5.38
2007	5.33
2006	5.33
2005	5.30
2004	5.30
2003	5.31
2002	5.35
2001	5.66
2000	5.83

Source: IRAS website www.iras.gov.sg.

¶5-260 Employee equity-based remuneration schemes

During the course of his employment, an employee of a company may be granted a right to acquire shares in the company or its parent company under the Employee Stock Option Scheme (ESOS) or other forms of Employee Share Ownership (ESOW) plans. The ESOW plans allow employees to own or purchase shares in the company or that of its parent company and such plans include share awards and other similar forms of employee share purchase plans.

The rules for taxing the right or benefit to acquire shares (under ESOS and ESOW plans) granted on or after 1 January 2003 are explained under the *General* section below.

For the pre-2003 position and a summary of *CIT v HY* [2006] SGCA 7, a case which related to the pre-2003 position, please refer to the 2011/2012 edition of this book.

There is preferential tax treatment (ie tax deferral or tax exemption) for gains or profits derived by an employee under certain ESOS and ESOW plans (see the *Incentive schemes* section below).

General

Right or benefit to acquire shares that is granted on or after 1 January 2003

Section 10(1)(b) income

A right or benefit granted to a person on or after 1 January 2003 to acquire shares in any company under an ESOS and other forms of ESOW plans, whether in his name or in the name of his nominee or agent, is deemed to be s 10(1)(b) income if it is obtained by him by reason of any office or employment (s 10(6)).

Source of income

For an individual who is granted share options in respect of an employment exercised in Singapore, the full amount of the gains, irrespective of where the stock options are exercised, would be employment income derived from Singapore.

Conversely, for an individual who is granted stock options in respect of employment exercised overseas, any gains derived by him from the exercise of these stock options, even if the options are exercised in Singapore, are not regarded as income derived from Singapore.

For an individual who is granted shares under an ESOW plan (with vesting imposed) on or after 1 January 2003 in respect of an employment exercised in Singapore, he will be taxed in Singapore on the full gains derived from these shares whether he is in or outside Singapore on the date of vesting. The tax treatment of these gains may differ if any of the incentive schemes applies.

Conversely, for an individual who is granted shares under an ESOW plan (with vesting imposed) on or after 1 January 2003 in respect of an employment exercised outside Singapore, the gains are not regarded as being derived from Singapore and are therefore not taxable. This treatment will apply even if he is physically present in Singapore or exercising an employment in Singapore on the date of vesting of such shares. (Note that the related costs incurred by the employer are prohibited under s 15(1)(p) — see Chapter 7 at ¶7-100ff.)

(See IRAS e-Tax Guide "Tax Treatment of Employee Stock Options and Other Forms of Employee Share Ownership Plans" (2nd Ed), published on 24 June 2013. This e-Tax Guide consolidates the following six e-Tax Guides previously issued on employee share option (ESOP) gains and other forms of ESOW plans:

(1) "Gains or Profits from Share Option", published on 30 June 1997

(2) "Valuation of Gains or Profits from Option to Purchase Shares in a Company Listed on the Singapore Exchange", published on 30 May 1998

(3) "Qualified Employee Stock Option Scheme", published on 31 March 2000

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(4) "Relief for Double Taxable of Gains from Employee Share Options", published on 31 March 2000

(5) "Changes to Tax Treatment of Employee Stock Options and Other Forms of Employee Share Ownership Plans", published on 31 August 2002, and

(6) "Tax Treatment of Employee Stock Option and Other Forms of Employee Share Ownership Plans — Alternative to the Deemed Exercise Rule", published on 19 August 2004.)

Accrual of income and taxable amount

Under s 10(6) of the Act, the date of accrual of the gains or profits and the taxable amount are determined as follows:

(a) where the right or benefit is exercised, assigned, released or acquired

at the time of the exercise, assignment, release or acquisition of the right or benefit; the taxable amount is the open market price of the shares at that time, less any amount paid for the shares

(b) notwithstanding para (a), where the right or benefit granted is subject to any restriction on the sale of the shares so acquired

at the time the restriction ceases to apply; the taxable amount is the open market price of the shares at that time, less any amount paid for the shares

(c) if it is not possible to determine the taxable amount under para (a) or (b), the Comptroller may calculate the taxable amount using the net asset value of the shares less any amount paid for the shares, and

(d) (up to YA 2009 inclusive) notwithstanding para (a) and (c), the taxable amount of income derived by any exercise of a right or benefit to acquire shares in any company listed on the Singapore Exchange (SGX) is the last done price on the listing date of the shares so acquired less the amount paid for the shares.

Under the SGX rules, when an option to acquire shares in a SGX-listed company is being exercised, new shares in the company will have to be issued to the employee who exercised the option. The new shares cannot be traded on the SGX until they are listed on the SGX. Where the employee exercised a right or benefit to acquire shares in the listed company, the taxable amount is therefore the "last done price on the listing date" less the amount paid for the shares. The "last done price on the listing date" is the open market price of the shares at the last transaction on the date on which the shares are first listed on the SGX after the employee acquired the shares. (See IRAS e-Tax Guide "Tax Treatment of Employee Stock Options and Other Forms of Employee Share Ownership Plans" (2nd Ed), published on 24 June 2013.)

From YA 2010, notwithstanding s 10(6)(a) and 10(6)(c), the gains or profits derived by the employee by any exercise of a right or benefit to acquire shares in any SGX-listed company is calculated as:

$$A - B$$

where A is —

(i) if the shares are not treasury shares, the price of the shares in the open market at the last transaction on the date on which the shares are first listed on the SGX after the acquisition of the shares by him, or

(ii) if the shares are treasury shares, the price of the shares in the open market at the last transaction on the date an appropriate entry is made in the depository Register by the Central Depository (Pte) Ltd to effect the acquisition of the treasury shares by him, and

where B is the amount paid for such shares.

Example 8

On 17 October 2013, SEL Ltd, a company listed on the SGX, granted Meg an option to buy 12,000 shares at $11 a share.

On 28 December 2014, Meg exercised the option to buy 7,000 shares. Under the share option plan, Meg was free to sell the shares any time after acquisition.

On 2 January 2015, these shares were first listed on the SGX (after Meg's acquisition). The open market price at the last transaction on that date was $15.10 per share.

Assume the shares are not treasury shares.

Solution

On 28 December 2014, the gains from Meg's exercise of the option to purchase 7,000 shares accrue as income to her. The income is therefore taxable in YA 2015.

The taxable benefit for YA 2015 is calculated as:

7,000 × ($15.10 – $11.00) = $28,700.

"Deemed exercise" rule

A "deemed exercise" rule applies to an individual who has been granted, on or after 1 January 2003, a right or benefit to acquire shares in a company while he is exercising an employment in Singapore if, immediately before he ceases that employment:

(a) the individual is neither a Singapore citizen nor permanent resident, or being a Singapore permanent resident, is leaving Singapore permanently or is posted to work overseas, and

(b) the right or benefit is not exercised, assigned, released or acquired by him, or the restriction on the sale of the shares has not ceased to apply.

The amount of gains or profits from the right or benefit is:

(a) deemed to be income derived by the individual one month before the date of cessation of employment or the date the right or benefit is granted, whichever is the later, and

(b) computed based on the open market price of the shares on that date, less the amount paid for the shares (the Comptroller may substitute net asset value for open market value in certain cases) (s 10(7)).

Essentially, under this "deemed exercise" basis, the individual is subject to tax on the gains or profits from:

(i) any unexercised or restricted employee stock options, and

(ii) any unvested or restricted shares under any other form of ESOW plan granted on or after 1 January 2003 while he is exercising employment in Singapore.

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In this respect:

- Shares are said to "vest" in an employee when the beneficial interest to those shares passes to the employee. Vesting occurs when the employee assumes the position of a shareholder, eg when he acquires the right to vote and the right to receive dividends, etc.
- A stock option that is "unexercised" may be vested (ie the right to exercise the stock option has arisen to the employee) or unvested.
- A stock option is "restricted" if a moratorium has not been lifted, eg the right to sell the shares has not accrued to the employee.

The "deemed exercise" rule will, however, not apply (ie s 10(6) will apply) to the individual if the employer has given an undertaking acceptable to the Comptroller (s 10(7A), 10(7B) and 10(7C)).

For the undertaking to be considered by the IRAS, the employer has to adopt an alternative methodology such as the tracking option, and satisfy the following criteria:

(a) The employer must be a Singapore-incorporated company or a branch of a foreign-incorporated company registered in Singapore and carrying on business activities in Singapore.

Where the right or benefit to acquire the shares is not granted by the employer in Singapore but by its parent company that is operating a group plan, the employer must satisfy the above conditions and not separately operate its own plan at the time of the grant by the parent company.

(b) The employer's human resource and computer systems are able to track the plans.

(c) The company that employs such an individual has met adequate capital requirements.

(d) The employer must not have:
- any record of late filing of tax returns or late payment of taxes, or
- committed any income tax offence for the three years immediately before the date of application.

This option essentially allows a company to track when the income realisation event of the foreign employee occurs. When such an event occurs, the employer will calculate and report the gains to the Comptroller and also undertake to collect and pay the tax on such gains.

(See IRAS e-Tax Guide "Tax Treatment of Employee Stock Options and Other Forms of Employee Share Ownership Plans" (2nd Ed), published on 24 June 2013.)

Incentive schemes

Tax deferral or tax exemption applies to the gains derived from the following employee equity-based remuneration (EEBR) schemes:

(a) Tax deferral

(i) Qualified EEBR Scheme (originally called "Qualified Employee Stock Option Scheme" when it was introduced in 1999).

(b) Tax exemption

The various EEBR schemes have been consolidated under an umbrella incentive scheme, namely the Equity Remuneration Incentive Scheme (ERIS) with the following three different tiers of incentives:

(i) Equity Remuneration Incentive Scheme (SMEs) (ERIS (SMEs))

(originally called "Entrepreneurial Employee Stock Option Scheme" when it was introduced in 2000, and later renamed "Entrepreneurial EEBR Scheme").

There is no change to the qualifying conditions.

The ERIS (SMEs) was not renewed upon its expiry on 31 December 2013. However, employees who were granted stock options or shares before the date of expiry will continue to enjoy partial tax exemption on the gains from these stock options or shares if the gains are derived on or before 31 December 2023 (s 13J(9A)).

(ii) Equity Remuneration Incentive Scheme (All Corporations) (ERIS (All Corporations))

(originally called "Company Stock Option Scheme" when it was introduced in 2001, and later renamed "Company EEBR Scheme").

Under ERIS, companies only need to issue stock options or share awards to at least 25% of their employees from 16 February 2008 (instead of at least 50% before 16 February 2008).

The change of names to ERIS (SMEs) and ERIS (All Corporations) above came into effect on 16 February 2008.

The ERIS (All Corporations) was not renewed upon its expiry on 31 December 2013. However, employees who were granted stock options or shares before the date of expiry will continue to enjoy partial tax exemption on the gains from these stock options or shares if the gains are derived on or before 31 December 2023 (s 13L(3A)).

(iii) Equity Remuneration Incentive Scheme (Start-ups) (ERIS (Start-ups))

The ERIS (Start-ups) came into effect from YA 2009 for stock options or share awards granted on or after 16 February 2008 by qualifying companies.

The ERIS (Start-ups) were not renewed upon its expiry on 15 February 2013. However, employees who were granted stock options or shares before the date of expiry will continue to enjoy partial tax exemption on the gains from these stock options or shares if the gains are derived on or before 31 December 2023 (s 13M(5A)).

The conditions for ESOW plans to qualify under these EEBR schemes are:

(a) All the criteria for eligibility under the respective forerunner schemes, ie:

- the Qualified Employee Stock Option Scheme (ESOS)

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- the Entrepreneurial Employee Stock Option Scheme (EESOS), and
- the Company Stock Option Scheme (CSOS)

must be satisfied.

(b) The minimum holding period requirement for such shares achieves a similar effect as the vesting period requirement in the forerunner stock option plans. This means that:

(i) where the price payable by an employee to acquire a share is equivalent to or exceeds the market value of the share at the time of grant of the share under the ESOW plan

a moratorium of at least half a year must be imposed (ie the share so acquired cannot be disposed of by that employee within half a year from the date of grant), and

(ii) where the price payable by an employee to acquire a share is at a discount to the market value of the share at the time of grant of the share under the ESOW plan

a moratorium of at least one year must be imposed (ie the share so acquired cannot be disposed of by that employee within one year from the date of grant).

(c) The shares granted under the ESOW plans must be ordinary shares and not redeemable or convertible shares or shares of a preferential nature.

(See IRAS e-Tax Guide "Tax Treatment of Employee Stock Options and Other Forms of Employee Share Ownership Plans" (2nd Ed), published on 24 June 2013.)

The various EEBR schemes contain elaborate rules and conditions. See Table 2, which incorporates the relevant expiry dates.

Table 2: Summary of Equity Remuneration Incentive Schemes (ERIS)

Type of scheme	*Policy objective*	*Key feature*	*Expiry date*
Qualified ERIS	To improve the cash-flow position of employees who do not immediately sell the shares	Allows deferred payment of tax on gains for up to 5 years, subject to an interest charge	–
ERIS (SMEs)	To encourage the use of equity remuneration among high-tech SMEs	Tax exemption applies to 50% of the gains up to $10m over a period not exceeding 10 years	31 December 2013 (s 13J(1)) Tax exemption will no longer apply to any gains or profits derived by a qualifying employee on or after 1 January 2024 (s 13J(9A))

Type of scheme	*Policy objective*	*Key feature*	*Expiry date*
ERIS (All Corporations)	To encourage more established companies that do not qualify for ERIS (Start-ups) or ERIS (SMEs) to extend equity remuneration to all levels of staff	For each year over a period not exceeding 10 years and in respect of total gains up to \$1m: – Full tax exemption applies to the first \$2,000 of the gains – 25% tax exemption applies to the remaining amount of the gains	31 December 2013 (s 13L(1)) Tax exemption will no longer apply to any gains or profits derived by a qualifying employee on or after 1 January 2024 (s 13L(3A))
ERIS (Start-ups)	To encourage the use of equity remuneration among new start-up companies	Tax exemption applies to 75% of gains up to \$10m over a period not exceeding 10 years (Note that this tax treatment is more favourable to the employee than that under ERIS (SMEs))	15 February 2013 (s 13M(1)) Tax exemption will no longer apply to any gains or profits derived by a qualifying employee on or after 1 January 2024 (s 13M(5A))

The following highlights some aspects of each scheme:

(1) Qualified EEBR scheme

This scheme is not legislated.

(See IRAS e-Tax Guide "Tax Treatment of Employee Stock Options and Other Forms of Employee Share Ownership Plans" (2nd Ed), published on 24 June 2013.)

Objective

This scheme is to encourage technopreneurship in Singapore and boost employee commitment and productivity by the continued ownership of shares in their companies.

Tax incentive

The payment of tax on gains arising under the Qualified EEBR scheme can be deferred for up to five years subject to an interest charge. The amount of tax to be deferred is limited to the employee's actual tax payable for the YA in which the gains become taxable. The maximum deferral period of five years begins on 1 January of the YA for which the gains are assessed.

Conditions

An employee has to apply for deferral of the tax on such gains at the time he files the return for the YA in which the gains are taxable. The following conditions must be satisfied:

(a) the employee is exercising an employment in Singapore at the time of the grant of the right or benefit

(b) the right or benefit was granted to the employee by the company or an associated company of the company for whom he is working at the time of exercise (a company is an associated company of another company if both companies belong to the same group of companies, eg parent and its subsidiaries)

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¶5-300 Non-taxable receipts

Based on the s 10(2) definition of "gains or profits from any employment", money paid or benefit granted to an employee is taxable as employment income to the employee if it is a reward for his services, ie for his "acting as or being an employee". The receipt or benefit will not be taxable as employment income merely because he would not have had the receipt or benefit were he not an employee.

Example 9

An employee won a $500 lucky draw voucher during his employer's annual dinner-and-dance function. The amount of $500 will not be taxable to him as it is in the nature of a windfall gain and not granted to him in respect of his employment.

In any case, it is not taxable, being covered by the IRAS concession (see Item 1, Table 3 in ¶5-900).

The receipts discussed in the following paragraphs have been held not to be income.

Inducement payments

Payments made to induce a person to enter into employment will be taxable if they represent payment for future services. An inducement payment would not be taxable, however:

(i) if it is made on an "out-and-out" basis and not for services to be rendered, or

(ii) if it is compensation for the loss of a substantial personal right.

The following cases illustrate these principles.

Undertaking to serve

In *Pritchard v Arundale* (1972) 47 TC 680, the taxpayer was a partner in an accounting practice. He agreed to serve a client company as joint managing director for seven years beginning not later than 1 January 1963. In consideration of his undertaking to serve, he was given 4,000 shares of the company. He in fact joined the company on 1 October 1962. The taxpayer contended that the transfer of the 4,000 shares to him did not give rise to any income tax liability because it was made to induce him to give up his own practice and status and to compensate him for doing so.

Megarry J distinguished an undertaking to serve from the rendering of services and held that the transfer of shares was not for services rendered or to be rendered. The taxpayer could have died before he commenced his employment with the company and yet there was no provision in the service agreement for him to return any of the consideration. The receipt was therefore not for services to be performed by the taxpayer.

Signing-on fee

In *Jarrold v Boustead* (1964) 41 TC 701, an amateur rugby player received a once-off signing fee for turning professional. It was held that the fee did not form part of the emoluments arising from an office or employment to him but was instead a capital sum paid to him for the life-long loss of his amateur status.

(3) ERIS (All Corporations)

Tax incentive

Section 13L regulates the ERIS (All Corporations) incentive.

Where a qualifying employee derives any gains or profits for any YA, after the expiry of the minimum holding period, from:

(i) any stock option granted during the period 1 April 2001 to 31 December 2013, or

(ii) any right or benefit under any share acquisition scheme (other than a stock option scheme) granted during the period 1 January 2002 to 31 December 2013,

to acquire shares in any qualifying company or in its holding company, tax exemption will be granted for the first \$2,000 plus 25% of an amount of such gains or profits (up to \$1m) in excess of \$2,000 derived over a 10-year period, which begins from the year the employee first derived such income.

The tax exemption applies similarly to the gains or profits that are derived in respect of the shares of the holding company of the qualifying company.

"Shares" include stocks but exclude any redeemable or convertible shares or shares of a preferential nature.

Conditions

For grants made on or after 16 February 2008, the Company EEBR scheme must be offered to at least 25% of the employees of the qualifying company during any calendar year.

(For grants made before 16 February 2008, the scheme must be offered to at least 50% of the employees.)

Whether this "25% ('50%') requirement" is satisfied is to be determined according to a legislated formula.

A "qualifying company" is a company incorporated in Singapore or a branch (of a foreign-incorporated company) registered in Singapore which, at the time of the grant to its employees of any right or benefit to acquire its shares or that of its holding company, carries on business in Singapore (s 13L(5)).

A "qualifying employee" is an employee of the qualifying company who, at the time of grant of any right or benefit to acquire the shares of the company or the shares of its holding company, does not beneficially own, directly or indirectly, voting shares that confer the right to exercise, or control the exercise of, 25% or more of the voting power in the qualifying company which grants the right or benefit. A qualifying employee may be a full-time or part-time employee.

Where a company grants a right or benefit to its employees to acquire shares under a scheme that meets all the conditions under both the Entrepreneurial EEBR scheme and the Company EEBR scheme, the company can only avail itself of either one of the schemes in respect of the right or benefit granted. Once the company has opted for a particular scheme, the option is irrevocable and the effects of the chosen scheme will apply to all rights or benefits granted subsequently under the scheme.

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The High Court stated the following:

(1) The "reward for services" test is not the only applicable test. A benefit, although arising by reason of the taxpayer's employment, may have nothing to do with the taxpayer's services in the past, present or future. In contrast, s 10(2)(a) subjected payments made "in respect of employment" to tax.

(2) It does not follow, however, that just because a benefit is somehow connected with employment, it must constitute a benefit contained "by reason of employment".

(3) Based on the UK case principles:

    (a) any gain or benefit obtained by a person in his capacity as an employee would constitute a gain or benefit from employment and is taxable as income

    (b) a gift made to an employee on personal grounds is not a benefit from employment, but the voluntary or discretionary nature of a payment (or other benefit) will NOT *ipso facto* render that payment a gift

    (c) in determining whether a benefit is obtained by reason of employment, the Court will look at the true nature of the benefit and not what the parties call it

    (d) whether the benefit is one arising from employment depends on the facts. The following factors are relevant, though none is conclusive:

    - value of the benefit
    - purpose of the benefit
    - class of persons to whom the benefit was granted
    - whether the benefit was granted by the employer or a third party
    - whether the employment had ceased when the benefit was granted
    - whether the benefit had a foreseeable element of recurrence
    - whether the benefit was granted pursuant to the terms of the contract of employment, and
    - whether the benefit was granted voluntarily.

Applying the above principles, the Court held that the gains were taxable income:

1. The value of the benefit (> $8m in total) seemed to commensurate with their being remuneration to the taxpayer as a senior employee rather than a condolence gift or a token of appreciation.
2. The object of the share option plan was to grant options to the participants as a reward for their services rather than as a personal gift to them.
3. Third and most importantly, the retention of the share options upon the taxpayer's death had always been part and parcel of the taxpayer's terms of employment. This strongly indicated that the retention of the share options by the estate constituted a benefit obtained by reason of the taxpayer's employment, despite the element of discretion present in this case.

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In contrast, in *Riley v Coglan* (1967) 44 TC 481, the taxpayer received a signing-on fee for agreeing to play for a club for a specified period. The payment was recoverable by the club on a pro rata basis if the taxpayer did not serve the required period. It was held that the fee was remuneration for future services and therefore taxable income.

Payment for loss of security

In *Glantre Engineering Ltd v Goodhand* 56 TC 165, the appellant company engaged an accountant who was at the time an employee in an international accounting firm. The company paid him £10,000 on taking up the appointment and claimed that this was to compensate him for leaving his employment, ie for the loss of his professional status, the loss of his prospects of becoming an accounting partner and the loss of security. It was held that the need to obtain security was a more important consideration than the loss of any professional status, prospects or advantage. As the individual had not given up any substantial rights, the £10,000 was taxable.

Payments for restrictive covenants

Payments for restrictive covenants, being capital receipts, are not taxable. If an employee receives a payment for entering into a covenant not to compete with his employer, he would not be taxable on such a receipt. It does not matter whether the covenant operates during or after the employment. The reason is that the payment is for the giving up of certain rights (*Beak v Robson* (1942) 25 TC 33).

Compensation for loss of office

Compensation for loss of office that is paid in respect of the termination of a source of income (the employment) cannot be said to be paid in respect of the employment (*H v CIR* (1974) 2 MLJ 135). The nature and purpose of the payment have to be taken into consideration. The arrangements that exist between the employer and employee concerned in relation to the payments are also relevant. The mere fact that such a payment may have been contractually provided for is not conclusive of its taxability.

(See IRAS e-Tax Guide "Retrenchment Pay that Constitutes Payment for Loss of Employment is not Taxable", published on 22 January 2002.)

In *Henry v Foster* 16 TC 605, a sick director wanted to resign but his fellow directors persuaded him to continue his service with the company until the end of the year so as to qualify for an additional payment. The payment was authorised under the company's articles, to be made to any director who had served the company for five full years. The sick director served the remainder of the year and received the payment (described as "compensation for loss of office"). It was held that the payment was taxable to him as it was for services rendered. *Romer* J said that the label of a payment is not conclusive as to its true character, and that:

> "[C]ompensation for loss of office means a payment to the holder of an office as compensation for being deprived of profits to which as between himself and his employer he would, but for an act of deprivation by his employer or some third party, have been entitled."

If a compensation for loss of office is in substance a redundancy payment that is made for the cessation of an employment, it would be a capital receipt.

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Example 10

A factory line supervisor was laid off by a Singapore company that has relocated its manufacturing operations to another country. The supervisor was paid a sum of $50,000 based on her last drawn salary ($5,000 per month) for each of the 10 years she has worked for the company. The amount will not be taxable to her. The fact that the amount was calculated by reference to her length of service does not in itself determine the nature of the receipt as revenue (see IRAS e-Tax Guide "Retrenchment Pay that Constitutes Payment for Loss of Employment is not Taxable").

On the other hand, the fact that a payment of $100,000 was described as compensation for loss of office in the Return of Employee's Remuneration (Form IR8A or IR8C) does not necessarily mean that the full amount is capital. It is necessary to determine the true nature of the payment. For example, if the payment of $100,000 includes some taxable components, eg pay in lieu of notice of $20,000 and arrears of salary of $5,000, then only $75,000 will be regarded as compensation for loss of office and will not be taxable.

¶5-400 Area representatives

Chapter 5

As explained in ¶5-300, occasional or casual services performed outside Singapore by a Singapore-based employee are regarded as an extension of his Singapore employment and incidental to such employment. The IRAS may, however, grant an "area representative" tax status to a foreign employee if the following conditions are satisfied:

(i) he is employed by a foreign employer who has a representative office registered with IE Singapore. If the foreign employer maintains a PE in Singapore, the employee's activities must not be connected with the business operations of that PE

(ii) he is based in Singapore for geographical convenience

(iii) he is required to travel outside Singapore in the course of his duties

(iv) his remuneration is paid by the foreign employer and not charged directly or indirectly to the accounts of a PE of the foreign employer in Singapore, and

(v) any other conditions the IRAS may impose.

The employment income of an area representative, which is taxable in Singapore, is prorated based on the duration of his physical presence in Singapore during the year. The IRAS treats a proportion of the number of days spent by an area representative on vacation outside Singapore as time spent in Singapore. The apportionment is based on the following formula:

$$\frac{A}{B}$$

where:

A	=	the number of days present in Singapore in the basis period
B	=	the number of days in the basis period.

Salary and other remuneration is apportioned to the number of days present in Singapore. Quarters and hotel accommodation provided by the employer are, however, not prorated as the IRAS regards these benefits-in-kind to be wholly related to the Singapore employment.

The residency status of an area representative is determined in the same manner as for other individuals. An area representative who is resident in Singapore will qualify for personal reliefs (see Chapter 12 at ¶12-100ff).

Where an individual is present in Singapore for any part of a day, his presence on that day is counted as one day (s 2(2)). An area representative who leaves Singapore for a business trip to Bangkok and returns the following day will therefore be regarded as having spent both days in Singapore.

Example 11

Alex, an employee of Plymouth Ltd, a UK company, is stationed in Singapore but his activities cover Indonesia, Malaysia, Thailand and Singapore. He qualifies for the area representative status.

In the year ended 31 December 2013, he was outside Singapore for 127 days as follows:

	Days
2 March to 6 April — Thailand	34
5 June to 14 July — Indonesia	38
1 August to 10 August — Malaysia	8
1 October to 15 November — Thailand	44
20 December to 24 December — Malaysia	3
Number of days outside Singapore	127

For the year 2013, Alex's employer provided him with unfurnished accommodation, the AV of which is $48,000. Alex's remuneration was $75,000.

Alex's assessable income for YA 2014 will be:

	$
Total remuneration	75,000
Income applicable to Singapore employment (238/365 × $75,000)	48,904
Value of accommodation	4,890
Assessable income	53,794

Note that for YA 2014, the value of accommodation is the lower of the AV ($48,000) or 10% of the income applicable to the Singapore employment, as Alex did not pay any rent.

From YA 2015, the taxable benefit from the provision of the accommodation will simply be the AV less rent (if any) paid by Alex (s 10(2)(ca)); see ¶5-230. See Example 13 in ¶5-800.

¶5-500 "Not Ordinarily Resident" scheme for employees

To attract talent to relocate to Singapore, the Government introduced the "Not Ordinarily Resident" (NOR) scheme which took effect from YA 2003. The main features of the NOR scheme are as follows.

Period of concession

An individual who qualifies for the NOR scheme will be granted the NOR status for five consecutive YAs. Other than the first YA, the individual need not be resident for any YA during the five-year period. An individual who satisfies certain conditions

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may apply to the Comptroller to be approved as a NOR individual (s 13N(3)). However, the individual is not required to revoke his resident status granted under the two-year or three-year concession (see Chapter 2 at ¶2-100ff) in order to qualify for the NOR status. But for an individual to be accorded the NOR status in any of the YAs during the period in which he has the NOR status, he must still be a resident under s 2(1) and not because of the two-year or three-year administrative concession.

(See IRAS e-Tax Guide "Not Ordinarily Resident (NOR) Scheme", first published on 7 July 2008 and updated on 29 August 2008.)

If a NOR individual is a resident in Singapore for any YA during the five-year period, he may elect irrevocably to enjoy either or both of the following tax benefits for that YA (s 13N(1) and 13N(6)):

(a) time apportionment of Singapore employment income, and

(b) tax exemption of employer's contribution to non-mandatory overseas pension fund or social security scheme.

Time apportionment of Singapore employment income

Currently, an employee who exercises any employment in Singapore is liable to tax on his full employment income in Singapore, regardless of the number of days he may have spent outside Singapore. This is because of the deemed-source rule for employment income under s 12(4). However, a resident NOR individual will be exempt from tax on his "relevant employment income", which is the fraction of his Singapore employment income that corresponds to the number of days he is not physically present in Singapore by reason of the exercise of any employment in Singapore (s 13N(7)). The individual can elect this tax treatment if he meets the following two conditions:

(a) the individual is not physically present in Singapore for at least 90 days for the above reason, and

(b) (from YA 2009) the individual's total Singapore employment income must be at least $160,000.

"Apportioned employment income" is the total Singapore employment income after deducting "relevant employment income".

From YA 2009, in calculating "relevant employment income", the total Singapore employment income to which the above time-apportionment formula is applied excludes director's fee and any Singapore income tax borne directly or indirectly by the employer.

As an IRAS concession, where a NOR taxpayer:

(i) leaves Singapore and returns on the same day, he is considered as being present in Singapore on that day (this is pursuant to s 2(2))

(ii) leaves Singapore on any part of a day and returns on any part of another day, the day of departure from Singapore will not be counted as one day presence in Singapore. Only the day of arrival in Singapore is counted as one day in Singapore. This method of counting increases the likelihood that the individual will satisfy condition (a) above for the NOR time-apportionment benefit to be available to him.

For useful examples that illustrate how the NOR incentive is applied, please refer to the IRAS e-Tax Guide on NOR.

Contributions to overseas pension fund or social security scheme

Currently, an employer's contribution to an overseas pension fund or social security scheme for an employee is taxable to the employee in the year of contribution. As a corollary, such contribution is also deductible to the employer in the year of contribution. As an exception, an employer's contribution to any approved mandatory overseas pension fund or social security scheme is not taxable to the employee if the employer does not claim a deduction for such contribution made. The exception is granted on a case-by-case basis.

Under the NOR scheme, a resident NOR individual is tax exempt on any contribution made by his employer to any non-mandatory overseas contribution scheme. To qualify for the exemption, the individual must not be a citizen or a permanent resident of Singapore at the time such contribution is made. From YA 2009, the tax exemption is subject to the condition that the employer does not claim a deduction for such contributions made. The tax exemption is subject to a cap (NOR cap). If the employer were to make only contributions to an approved mandatory overseas contribution scheme, the cap will not apply (s 13N(1)(b)).

¶5-600 Pensions

A pension accruing in or derived from Singapore is taxable to the recipient under s 10(1)(e). A pension is a payment made to an individual after his retirement from an employment. The pension payment may be contractual or voluntary. It may be made monthly, quarterly or annually but would exclude a lump sum payment.

As the term "gains or profits from any employment" (ie a s 10(1)(b) source of income) includes any sum standing to the account of any individual in any pension fund which he is entitled to withdraw upon retirement or which is withdrawn therefrom (s 10(2)(d)), a withdrawal from a pension fund where contributions are made to a pool and not to individual accounts will be taxed as a pension under s 10(1)(e).

The following pensions or commutations of pensions are tax exempt:

(a) Singapore Government pensions (s 13(1)(x))

(b) any sum received by way of commutation of Singapore Government pensions (s 13(1)(h))

(c) approved pensions received by a resident person to the extent that they relate to his employment with the employer before 1 January 1993 (s 13(1)(x))

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(d) any sum received by way of commutation of approved pensions to the extent that it relates to the recipient's period of employment with the employer before 1 January 1993 (s 13(1)(h))

(e) certain wound or disability pensions (s 13(1)(k)), and

(f) certain widows' and orphans' pensions (s 13(1)(l)).

¶5-700 Other tax exempt receipts

Besides the tax exempt receipts set out in ¶5-240 and ¶5-600 above, the following receipts are also tax exempt:

(a) any foreign income received by a non-resident individual in Singapore (s 13(7A)(a))

(b) any foreign income received by a resident individual on or after 1 January 2004 in Singapore (excluding income received by him through a partnership in Singapore) (s 13(7A)(b))

(c) income from any employment exercised in Singapore by a non-resident employee for not more than 60 days in the calendar year (s 13(6)). This exemption does not apply to:

   (i) the emoluments received by a company director, or

   (ii) the gains or profits of public entertainers (as defined in s 40A) whose visits are not substantially supported from public funds of the government of another country. In practice, financial assistance of more than 50% qualifies for the "substantially supported" test (s 13(7)).

(d) official emoluments payable from Commonwealth funds to members of Commonwealth forces and to persons in the service of a Commonwealth Government in Singapore in respect of their offices under such Commonwealth Government, if such emoluments are subject to tax in such Commonwealth country (s 13(1)(c))

(e) death gratuities and consolidated compensation for death or injuries (s 13(1)(i))

(f) any retiring gratuity received by an individual from an approved pension or provident fund (other than the CPF or ADPPF), to the extent that the gratuity relates to the period of the individual's employment before 1 January 1993 (s 13(1)(jb)) (see also ¶5-240)

(g) annual bounties paid out of public revenue to members of local forces declared by the Minister (s 13(1)(s)), and

(h) income derived from an employment exercised on board a Singapore ship (ie a ship flying a Singapore flag) if the employment is exercised substantially outside Singapore (s 13(1)(w)). This exemption applies to the income of non-resident and resident crew of Singapore ships that ply in international traffic. Crew employed on board Singapore ships which operate mainly or exclusively within the territorial waters of Singapore (eg sightseeing boats) are not exempt on their employment income.

¶5-800 Worked examples

Examples 12 and 13 illustrate the application of the tax rules for YAs 2014 and 2015 respectively.

Example 12

Mel arrived in Singapore to take up employment with Sunshine Ltd from 1 January 2013. Mel has a wife and a daughter aged 14 years. He was provided with hotel accommodation for the first three months from January to March, and a fully furnished apartment for the rest of the year.

The apartment has two units of furniture, two air-conditioner units, a refrigerator and two fans. The AV for the apartment, paid by the employer, was $24,000. On 1 January 2013, Mel was provided with a new car. His employer bore the petrol expenses. Mel's monthly private mileage was estimated to be 300 km. The cost of the car was $130,000, inclusive of COE of $40,000, and its open market value is $45,000 (its residual value is therefore 80% × $45,000 = $36,000).

Mel's annual salary and bonus were $60,000 and $24,000 respectively. In addition, he received a monthly allowance of $200 for his daughter's education. Mel spent all his monthly entertainment allowance of $250 solely for business purposes.

His taxable employment income for YA 2014 is computed as follows:

(a) Period from January to March 2013 (3 months)

	$	$
Salary ($60,000 × 3/12)		15,000
Bonus ($24,000 × 3/12)		6,000
Educational allowance ($200 × 3)		600
Entertainment allowance		—
		21,600
Benefits-in-kind:		
Hotel accommodation:		
Self and wife at $250 per month per adult	1,500	
1 child at $100 per month	300	
	1,800	
2% of $15,000	300	
	2,100	
Taxable car benefit#	1,502	3,602
Taxable employment income		25,202

The taxable car benefit is computed as follows:

$$\frac{3}{12} \times \{[\frac{3}{7} \times (\frac{130,000 - 36,000}{10})] + (\$0.55 \times 3,600)\} = \$1,502$$

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(b) Period from April to December 2013 (9 months)

	$	$
Salary ($60,000 × 9/12)		45,000
Bonus ($24,000 × 9/12)		18,000
Educational allowance ($200 × 9)		1,800
Entertainment allowance		—
		64,800
Benefits-in-kind:		
Furnishings:		
2 units of furniture at $10 per month	180	
2 units of air-conditioners at $10 per month each	180	
2 fans at $1 per month each	18	
1 refrigerator at $10 per month	90	
Taxable car benefit*	4,507	4,975
		69,775
Value of accommodation — *lower of*		
(9/12 × $24,000) or 10% × $69,775		6,977
Taxable employment income		76,752

* The taxable car benefit is computed as follows:

$$\frac{9}{12} \times \{[\frac{3}{7} \times (\frac{130{,}000 - 36{,}000}{10})] + (\$0.55 \times 3{,}600)\} = \$4{,}507$$

Mel's total taxable employment income for YA 2014 = $25,202 + $76,752 = $101,954

Note: From YA 2015, the method of calculating the taxable value of hotel accommodation, furniture and fittings, and housing accommodation provided to employees will be changed. See ¶5-220 and ¶5-230 for details, and Example 13.

Example 13

Jay arrived in Singapore to take up employment with Starlight Pte Ltd from 1 January 2014. Jay has a wife and a daughter aged 14 years. He was provided with free hotel accommodation for the first three months from January to March, and rent-free apartment for the rest of the year. The three-month hotel accommodation cost his employer $15,000. The apartment is furnished with two air-conditioner units, a sofa, a washing machine and a dryer. Its AV for the year 2014 was $42,000. On 1 April 2014, Jay was provided with a new car. Jay's private mileage on the car was estimated to be 20,000 km in 2014, and Jay paid the petrol expenses himself. The cost of the car was $180,000, inclusive of COE of $70,000, and its residual value is $50,000.

Jay's annual salary and bonus for 2014 were $200,000 and $24,000 respectively. In addition, he received a monthly allowance of $200 for his daughter's education. Jay spent all his monthly entertainment allowance of $250 solely for business purposes.

His taxable employment income for YA 2015 is computed as follows:

	$	$
Salary		200,000
Bonus		24,000
Educational allowance ($200 × 12)		2,400
Entertainment allowance		—
Hotel accommodation (1 January 2014 to 31 March 2014) (actual cost to employer less any amount paid by Jay)		15,000
Taxable car benefit (1 April 2014 to 31 December 2014)		13,178
9/12 [3/7 × (180,000-50,000)/10] + ($0.45 × 20,000)		
Taxable benefit of provision of rent-free apartment (1 April 2014 to 31 December 2014) (Note: the apartment is considered "fully furnished" as both fittings and furniture/household appliances are provided; the taxable benefit in the form of F/F provided is therefore 9/12 × 50% of AV)		
9/12 AV + 9/12 (50% of AV) = 31,500 + 15,750		47,250
Taxable employment income		301,828

¶5-900 IRAS' tax treatment of benefits-in-kind

Since 2004, the IRAS has been reviewing the income tax treatment of benefits-in-kind and has made available such information on its website at www.iras.gov.sg (see the IRAS' Press Statements dated 5 October 2000 and 17 March 2006, and "FAQ on Tax Treatment of Employee's Remuneration" found in the section "Responsibilities as employer").

Table 3 lists the main types of benefits-in-kind that qualify for tax exemption or concession for YA 2008 onwards unless otherwise stated. Any related benefits that may be taxable in certain circumstances are stated below.

Table 3: List of benefits-in-kind granted administrative concession or are exempt from income tax

Types of benefits		
1	Benefits that foster goodwill or promote camaraderie among staff:	
	(a)	Sponsored group outings excluding subsidised overseas holiday trips
		Overseas holiday trips, even if they are extended to all staff, are not covered by the concession and the holiday portion will be taxable. The concession, however, covers the provision of a company chalet.
	(b)	Family Day events
	(c)	Corporate Dinner and Dance (including door gifts and lucky draw prizes)

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Types of benefits	
	(d) Provision of social or recreational facilities (free or subsidised) • where facilities are provided by the employer • where facilities are provided by third party vendors with which the employer has a corporate membership. The concession, effective from YA 2008, is confined to the use of gyms, sports venues, holiday chalets and BBQ pits. It does not apply to corporate membership in a country club even if the usage of the club's facilities is made available to all employees. (e) Corporate gifts such as mugs and T-shirts (f) Free or subsidised food and drinks Note that meal reimbursements and meal vouchers are not covered by this concession as these benefits are assigned to specific employees. (g) Free transport between pick-up points and the location of employment (h) Corporate passes to places of interest in Singapore (this concession is effective from YA 2008) Note that the above benefits should generally be available to all staff in order to achieve the objective of fostering good relationship among staff and it should be difficult to assign a specific value to each employee.
2	Benefits/perquisites relating to the health of employees (free or subsidised): (a) Outpatient treatment (b) Hospitalisation (c) Dental treatment The provision of basic medical care by employers is not taxable. Tax exemption also applies to non-basic medical care (eg reimbursement of maternity expenses and cosmetic dental treatment like crowning of teeth), provided the benefit is made available to all staff. This concession also covers the medical expenses of the employees' spouses and children but not *the employees' parents*.
3	Benefits/perquisites given to promote creativity and innovation: (a) Staff suggestion (b) Quality Action Circle (QAC)/Work Improvement Teams (WITS) award
4	Benefits/perquisites given to encourage the upgrading of skills and knowledge building: (a) Subsidies for course fees (b) Training fees for staff development (c) Scholarship awards (d) Examination fees The above benefits are not taxable on the basis that these are part of training provided by the employer and the benefits are available to all staff.
5	The following cash or non-cash gifts that do not exceed $200 in value are not taxable, provided the gifts are available to all staff: (a) Gifts for special occasions (eg birthdays, weddings and births) (b) Gifts for festive seasons (eg Chinese New Year, *Hari Raya*, *Deepavali* and Christmas) Where the value of the gift/award exceeds $200, the full amount is taxable in the employee's hands. Before YA 2008, the exemption threshold was $100. Bereavement gifts (cash or non-cash) are not subject to any exemption threshold and are not taxable.
6	Childcare subsidy provided by employers to employees who send their children to licensed childcare centres (Author's note: This tax exemption is also covered by s 13(1)(zb).)

Types of benefits	
7	Death gratuities/injuries or disability payments/workmen compensation
8	(a) Entrance fees for professional, social or recreational club membership where the employer joins as a corporate member and allows some of its employees to enjoy the facilities in private clubs (b) Club subscriptions paid by the company for its employees' official or business use (eg to entertain company's clients)
9	Insurance premiums paid by the employer for the following: (a) Policy where the employer is named as the beneficiary (note that where no beneficiary is named, the employer would be the policyholder), and (b) Group medical insurance policy (this is regardless of who is named as the beneficiary). This concession is effective from YA 2008. Note that the above benefits should generally be available to all staff.
10	Interest benefits arising from loans (interest-free/subsidised interest) provided by employers to employees, eg personal loan, housing and/or renovation loan, vehicle loan and computer loan Note that employees must not have substantial shareholdings in, or control or influence over, the company. This concession does not cover interest rate subsidies granted by the employer in respect of commercial loans obtained from financial institutions.
11	Laptops, palmtops and mobile phones provided by the employer for official/business purposes
12	The following awards that do not exceed $200 in value are not taxable, provided the awards are available to all staff: (a) Retirement award (non-cash) provided it is symbolic and a token of little or commercial value (b) Long service award (non-cash) provided it is symbolic and a token of little or commercial value (c) Service Excellence Award (cash/non-cash) (d) Zero or low Medical Certificate (MC) award (cash/non-cash) (e) Award for passing examinations (cash/non-cash) (f) Bursary awards (g) Innovation or improvement awards Where the value of the gift exceeds $200, the full amount is taxable in the employee's hands. Before YA 2008, the exemption threshold was $100.
13	Staff uniforms where the uniforms have to be worn as a job requirement and for corporate identity
14	Overtime meal allowances or reimbursements paid to employees for working beyond official working hours on ad hoc basis, provided that the overtime meal allowance/reimbursement policy is generally available to all staff. This is effective from YA 2006. Fixed monthly payments remain taxable.
15	Transport-related payments/benefits: (a) Reimbursement of overtime transport payment or allowances made to employees for working beyond official working hours on an ad hoc basis due to exigencies of work, provided that the payments are generally available to all staff. This is effective from YA 2006. (b) Reimbursement of transport expenses or per-trip allowances for actual trips made for official business (eg to attend meetings or visit clients). These payments are not taxable if they are incurred to enable the employees to discharge their official duties, eg travelling from the office to the client's place; travelling from the place of one client to another.

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Types of benefits	
	(c) Transport payments for trips to/from the employee's home to a business venue for meetings if the travel is for business purposes. Reimbursements for such travel are not taxable. With effect from YA 2008, per-trip allowances for actual trips made are not taxable. (d) Transport payments for trips to/from home and airport in respect of overseas business trips. Reimbursements for such travel are not taxable. With effect from YA 2008, per-trip allowances for actual trips made are not taxable.
16	Private benefits (including reimbursements of car park charges and petrol) derived by drivers of commercial vehicles when the drivers drive the vehicles to and from home to the workplace. Commercial vehicles refer to motorcycles, vans, trucks, minibus and lorries. This concession is effective from YA 2008.
17	Staff discount (excluding interest-free or subsidised loans and discounted stock options or awards) offered by employers and its related entities, including discounts that are extended to the staff's family members, relatives and friends. Effective from YA 2011, the staff discount granted is not taxable if the value of the item of good or service offered does not exceed $500 and the staff discount is generally available to all staff. Where the value exceeds the exemption threshold, the whole value of the staff discount is taxable. The taxable value of the staff discount is the market value of the item less any amount paid by the employee.

Source: IRAS website www.iras.gov.sg.

CHAPTER 6

OTHER SOURCES OF INCOME

¶6-000 Introduction

This chapter sets out the tax treatment of:

- interest and discounts (s 10(1)(d))
- charges and annuities (s 10(1)(e))
- rents, royalties and any other profits arising from property (s 10(1)(f)), and
- gains or profits of an income nature caught under s 10(1)(g).

Where interest, discounts, rents and/or royalties are derived by a person from the carrying on or exercise of a trade or business, they are assessable under s 10(1)(a) instead of s 10(1)(d) or 10(1)(f). Where the income concerned constitutes a s 10(1)(a) source, the following tax treatment would apply to the person:

(a) the basis of assessment would be based on the preceding accounting year

(b) capital allowances are available (see Chapter 8 at ¶8-100ff)

(c) any s 10(1)(a) losses of the current year can be:

  (i) set off against non-s 10(1)(a) sources of income for the same year of assessment (YA)

  (ii) transferred under the Group Relief Scheme

  (iii) carried back for set-off against the assessable income of the preceding YA, and/or

  (iv) carried forward for set-off against the statutory income of future YAs (for details and conditions, see Chapter 9 at ¶9-100ff).

Some main tax exemptions for income that apply to individuals are listed at ¶6-950.

The tax treatment of dividends is explained in Chapter 10 (see at ¶10-100ff).

INTEREST

¶6-210 Introduction

Interest is not defined in the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act"). In *Bennett v Ogston* (1930) 15 TC 374, *Rowlatt* J described interest as "payment by time for the use of money". In *Riches v Westminster Bank Ltd* [1947] AC 390, Lord *Wright* said:

> " . . . the essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or conversely the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation. From that point of view it would seem immaterial whether the money was due to him under a contract express or implied, or whether the money was due for any other reason in law . . . ."

In *BFC v CIT* [2014] SGCA 39, the issue was whether the appellant company could claim a deduction for discounts offered to the purchasers of certain bonds issued in 1995 (secured) and 1996 (unsecured) and for the redemption premium paid on those 1995 bonds. The issue concerned, among other things, the interpretation of the term "interest" as an expense in the context of s 14(1)(a) (see Chapter 7 for details). It is nevertheless instructive to set out below the Singapore Court of Appeal's views concerning "interest":

(1) A definitive feature of "interest" was that its total amount would depend on the duration of the loan; in other words, monetary consideration for a loan is "interest" only in so far as the amount of consideration payable depends on the

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period for which the loaned money is in the borrower's hands (The Court of Appeal endorsed this point made by the court below, at para [49]).

(2) Interest "may be regarded either as representing the profit [a lender] might have made if he had had the use of the money, or conversely the loss he suffered because he had not that use" (Lord Wright's meaning of "interest given in the Riches case above was endorsed, at para [51]).

(3) Interest need not be paid periodically. Payment of interest can take place monthly, half-yearly or yearly, and can even take the form of a single lump sum payment, be it at the time the lender extends the loan or at the time the borrower makes repayment or, for that matter, at any other time.

¶6-220 Source of interest

The determination of the source of interest income has been considered in several cases.

In the South African case *CIR v Lever Brothers & Unilever Ltd* [1946] 14 SATC 1, *Watermeyer* CJ identified the source or originating cause of loan interest not to be the debt but the services that the lender performs to the borrower, that is, the "provision of credit".

In the New Zealand (NZ) case *CIR v NV Philips Gloeilampenfabrieken* (1954) 6 AITR, the taxpayer was incorporated and carried on business in Holland as a manufacturer of electric lamps. It exported goods to a NZ company (NZCo) on terms that payment was to be made in English currency in Holland. By 1948, NZCo owed £80,000 for goods supplied; this trade debt did not bear interest. Both parties agreed to convert the trade debt into an interest-bearing loan and, in late 1948, they executed a loan agreement in Holland. Under the agreement, the taxpayer would advance £80,000 to NZCo for 15 years at 3% interest per annum, all payments to be made in English currency in Holland.

After the agreement was executed:

(i) the taxpayer sent NZCo a cheque drawn on a London bank for £80,000

(ii) NZCo endorsed the cheque and returned it to the taxpayer in settlement of the trade debt, and

(iii) NZCo subsequently paid interest and principal on the £80,000 loan.

The NZ Revenue assessed the taxpayer on the interest paid by NZCo under the loan, contending that the interest was derived from a source in NZ as the payment was made by a NZ resident in respect of a debt owed by a NZ resident. The Revenue also contended that the interest was derived on money lent in NZ.

The taxpayer appealed the assessment, contending that as the loan transaction took place in Holland, the interest was derived from a source outside NZ.

The NZ Court of Appeal unanimously held that the interest income did not have a source in NZ and was therefore not subject to NZ tax. The judges, however, came to different conclusions on the source of the interest income.

Gresson J suggested that the source was in London, as the "originating cause" of the loan obligation was that the taxpayer had lent money or provided credit in London. The funds were in a London bank and were used to discharge a debt owed to a creditor in Holland. By contrast, although the other judges applied the same common law test of "provision of credit", they took the view that the loan transaction was entered into in Holland and so the money was lent in Holland and the interest was sourced in Holland.

Section 12(6) deemed-source rule

To avoid the practical difficulties of having to determine the source of interest income based on the facts of every situation, s 12(6) was introduced in the 1970s to deem the source of interest (and certain other payments) to be in Singapore, if the conditions therein are satisfied. The deemed-source rule sought to simplify tax administration and compliance. Section 12(6) is widely worded, and its scope also covers trade interest, ie interest on debts arising from trade transactions.

Under s 12(6), there is deemed to be derived from Singapore:

(a) any interest, commission, fee or any other payment in connection with any loan or indebtedness or with any arrangement, management, guarantee, or service relating to any loan or indebtedness which is:

   (i) borne, directly or indirectly, by a person resident in Singapore or a permanent establishment (PE) in Singapore (except in respect of any business carried on outside Singapore through a PE outside Singapore or any immovable property situated outside Singapore), or

   (ii) deductible against any income accruing in or derived from Singapore, or

(b) any income derived from loans where the funds provided by such loans are brought into or used in Singapore.

Section 12(6)(b) was examined in the local case *CH Pte Ltd v CIT* (1988) 1 MSTC 7,022.

In *CH Pte Ltd*, the taxpayer was incorporated in Singapore. There was one local resident director; the remaining directors resided in Hong Kong. The taxpayer was wholly owned by a company incorporated in Hong Kong. The transaction in question involved an Australian company, Delacom Investments Pty Ltd, which required a $9m loan to purchase an interest of mineral rights in Australia. The taxpayer and Delacom entered into a loan agreement. The taxpayer obtained the $9m through its overdraft facility with BNP, Singapore Branch, and lent it to Delacom, who would then use it to pay a third party for the mineral rights. The agreement was signed and the transfer of the sum of money took place in Johor Bahru.

The High Court regarded the material facts to be:

(i) the origin of the loan (which was the overdraft facility granted to the taxpayer in Singapore)

(ii) the performance of the loan (which hinged on the use of the funds and therefore the clearance of the cheques in Singapore), and

(iii) the disbursement of the money in S$ (which was credited to Delacom's account with the same branch of BNP, in Singapore).

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The judge found that the execution and performance of the agreement in Johor Bahru was "too superficial and also artificial". He was of the view that the word "use" in s 12(6)(b) was capable of "a wide import", and that as the loan was disbursed in Singapore, the funds were used in Singapore. The loan interest was therefore derived from Singapore under s 12(6)(b).

Note that the scope of s 12(6) covers not only interest income but also commission, fee and essentially other service-related payments in connection with any loan or indebtedness. Where the recipient of such interest or payment is a non-resident, withholding tax may apply. Section 12(6) is also to be read with s 12(6A) (see ¶13-610).

¶6-230 Accrual and basis of assessment

Interest income accrues on the date it becomes due and payable, ie on the date the taxpayer is entitled to receive it; this is not necessarily the date of actual receipt.

Interest income that is not a trading receipt is assessable under s 10(1)(d). The basis period would be the calendar year immediately preceding the YA concerned. However, the preceding accounting year basis would apply where:

(i) the interest income under s 10(1)(d) accrues to a company that makes its accounts to a date other than 31 December (see ¶2-410), or

(ii) the interest income is assessable under s 10(1)(a) (eg the recipient is a bank or financial institution).

Chapter 6

¶6-240 Negotiable certificates of deposit

Section 10(12) sets out how interest from negotiable certificates of deposit (NCD) or gains or profits from the sale thereof are to be taxed. If the income is derived by a financial institution, it is treated as a s 10(1)(a) source. Otherwise, it is taxable under s 10(1)(d) as follows:

- The subsequent purchaser of an NCD can claim a deduction of the excess of the purchase price over issued price against the interest income received.
- If a subsequent purchaser sells the NCD after receiving interest, the gains or profits on disposal will be the sale price *less* the lower of the purchase price or issued price.
- If a subsequent purchaser buys an NCD at a price which is less than the issued price and holds it till maturity, the interest deemed derived is the amount by which the issued price exceeds the purchase price.

¶6-250 Tax exemption and reduction

The following types of interest income are exempt from tax:

(a) interest derived by individuals from the deposit of money held in Singapore with an approved bank or a licensed finance company (s 13(1)(zd))

(b) interest on money held on deposit in an approved bank in Singapore by a person (not an individual) if that person does not, by himself or in association with others, carry on a business in Singapore and does not have a PE in Singapore (s 13(1)(t))

(c) interest on money held on deposit in an approved bank in Singapore by a non-resident person (not being an individual nor a PE in Singapore) who carries on any operation in Singapore through a PE in Singapore if the funds used by that person to make the deposit are not obtained from the operation (s 13(1)(ta))

For s 13 exemption purposes (which include the exemptions (a) to (c) above), "approved bank" means a licensed bank or a merchant bank approved as a financial institution under s 28 of the *Monetary Authority of Singapore Act (Cap 186, 1999 Revised Ed)*.

(d) interest of a non-s 10(1)(a) nature from debt securities derived on or after 1 January 2004 by individuals (if not derived through a partnership in Singapore) (s 13(1)(ze)) (see ¶6-950)

(e) interest received from approved Asian Dollar Bonds by:

(i) a non-resident individual, or

(ii) a person (not an individual) if that person does not, by himself or in association with others, carry on a business in Singapore and does not have a PE in Singapore (s 13(1)(v))

(f) interest (and other investment) income of any approved pension, provident fund or society (s 13(1)(q)), and

(g) subject to some conditions, interest derived from any qualifying debt securities issued during the period 28 February 1998 to 31 December 2013 by (s 13(1)(a)):

(i) a person who is not resident and does not have any PE in Singapore, or

(ii) a non-resident person who carries on any operation in Singapore through a PE in Singapore where the funds used by that person to acquire the qualifying debt securities are not obtained from the operation.

The term "qualifying debt securities" (defined in s 13(16)) includes:

- Singapore Government securities issued from 28 February 1998 to 31 December 2013.
- Bonds, notes, commercial papers and certificates of deposits which are arranged by:
  - any financial institution in Singapore and issued during the period 28 February 1998 to 31 December 2013
  - any approved bond intermediary and issued during the period 27 February 1999 to 31 December 2013 under any prescribed programme the arrangement of which is completed on or before 31 December 2013
  - any financial sector incentive (bond market) company and issued during the period 1 January 2004 to 31 December 2013, or
  - any financial sector incentive (standard tier) company or financial sector incentive (capital market) company and issued during the period 1 January 2014 to 31 December 2018.

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The term "financial institution" means an institution licensed or approved by the Monetary Authority of Singapore (MAS), and includes an approved fund manager and a finance and treasury centre under the Act (s 13(16)).

The following income derived by a person from any "qualifying project debt securities" is also exempt from tax (subject to detailed conditions) (s 13(1)(b)(i) and (ii)):

(i) interest, where the securities are issued during the period 1 November 2006 to 31 March 2017, and

(ii) discount, prepayment fee, redemption premium and break cost, where the securities are issued during the period 15 February 2007 to 31 March 2017.

The term "qualifying project debt securities" (s 13(16)) includes debt securities which are arranged by:

- any financial institution in Singapore and issued during the period 1 November 2006 to 31 December 2013
- any financial sector incentive (bond market) company or financial sector incentive (project finance) company and issued during the period 1 November 2006 to 31 March 2017, or
- any financial sector incentive (standard tier) company or financial sector incentive (capital market) company and issued during the period 1 January 2014 to 31 March 2017.

Interest may also be exempt or subject to reduced taxation if, for example:

(a) the Minister for Finance (the "Minister") is of the opinion that the payment of the interest is made for any purpose that will promote or enhance the economic or technological development of Singapore (s 13(4) incentive), or

(b) it accrues on an approved foreign loan under the *Economic Expansion Incentives (Relief from Income Tax) Act (Cap 86, 2005 Revised Ed)* (the "EEIA").

¶6-255 Hybrid instruments

This part summarises the Inland Revenue Authority of Singapore (IRAS) position concerning the income tax treatment of **hybrid instruments ("HIs")**. HIs exhibit both debt-like and equity-like features, and the tax issue is whether the returns (or correspondingly payments) are to be regarded as interest income to the investor (interest expense to the issuer) or as dividend income to the investor (dividend distribution by the issuer). Note that this summary is relevant to Chapter 7 on Deductions and ¶10-400 on Dividends.

(See IRAS e-tax Guide, "Income Tax Treatment of Hybrid Instruments", published on 19 May 2014.)

Indicators of whether HI is a debt instrument or an equity instrument

In deciding how a HI is to be characterised, the IRAS will, as a first step, look at its legal form.

This involves examining the legal rights and obligations created by the instrument. A HI is generally characterised as equity if the legal terms indicate ownership interests in the issuer.

If the legal form is not indicative of or does not reflect the legal rights and obligations, the IRAS will examine all the facts and circumstances, including the following factors (not exhaustive):

(a) Nature of interest acquired

If the capital provided by an investor results in his acquiring shareholding and residual interest in the entity that issues the HI, it would suggest that the HI is an *equity* instrument.

(b) Investor's right to participate in issuer's business

A right for an investor to participate in the issuer's business operation pursuant to the investor's investment in the instrument would suggest that the instrument is an *equity* instrument.

(c) Voting rights conferred by the instrument

If a HI provides an investor with voting rights at general meetings, it would suggest that the HI is an *equity* instrument.

(d) Obligation to repay the principal amount

If the HI has a fixed repayment date in a reasonably foreseeable future that requires the issuer to unconditionally repay the principal amount on or by that date regardless of the issuer's business performance, it would suggest that the HI is a *debt* instrument.

(e) Payout

If (i) there is a non-contingent obligation for an issuer to make a periodic distribution of a pre-determined amount to the investor regardless of the issuer's business performance, and (ii) distribution is cumulative, it would suggest that the HI is a *debt* instrument.

(f) Investor's right to enforce payment

If an investor has an unconditional right to enforce the payment of distribution and repayment of the principal amount, it would suggest that the HI is a *debt* instrument.

(g) Classification by other regulatory authority

If any other regulatory authority in Singapore does not regard the HI as debt for regulatory purpose, it would imply that the instrument is an *equity* instrument.

(h) Ranking for repayment in the event of liquidation or dissolution

If (i) the right of an investor to repayment of the principal amount is subordinated to that of general creditors or to holders of subordinated debt of the issuer, or (ii) the investor is required to bear the current or future losses of the issuer by way of either a write-down of the principal amount of such instrument or conversion to ordinary shares of the issuer, it would suggest that the HI is an *equity* instrument.

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Taxability of distributions/payments and timing of deductions

If a HI issued by a company or Real Estate Investment Trust (REIT) is characterised as an **equity instrument**, distributions from the issuer to the investor are regarded as either dividends or REIT distributions respectively. This means that no deduction will be allowed to the Singapore-based issuer of such an instrument in respect of distributions paid to investors (see Chapter 7).

Where the dividend is paid by a Singapore resident company, it will be regarded as a one-tier dividend and therefore tax-exempt to the investor (see ¶10-400).

Where the dividend is paid by some other entity, it will be regarded as a foreign dividend. It is taxable to the investor who receives it in Singapore unless an exemption applies (see Chapter 14).

As for REIT distributions, the tax treatment depends on the underlying receipts from which the distribution is made and the profile of the investors.

If a HI issued by a Singapore-based issuer is characterised as a **debt instrument**,

(a) the interest income is taxable to the investor on the date that his legal entitlement to that income is crystallised

(b) the interest expense is generally considered as incurred by the issuer when his liability to pay the interest to the investor is crystallised.

If the issuer or the investor prepares its financial accounts according to FRS 39 and does not opt out of the FRS 39 tax treatment, s 34A will apply to the taxability and timing of deduction of the interest (see ¶4-700).

For details and examples of a HI being treated as a debt or an equity instrument, see Appendixes 1 and 2 of the abovementioned IRAS e-tax Guide.

Treatment of Additional Tier 1 instruments as debt for income tax purposes

Additional Tier 1 (ATI) instruments are a new type of capital instruments allowed under the Basel III global capital standards. Treating the instruments as debt (where the interest expense is deductible for banks and taxable to investors) will provide tax certainty and maintain a level-playing field for Singapore incorporated banks as with other jurisdictions that have legislated the same treatment.

With the above policy objective in mind, any distribution that is liable to be made in respect of an AT1 instrument in the basis period for YA 2015 or a subsequent YA is deemed for the purposes of the Act and for that YA, to be interest derived from a debt security (s 10O). Specifically, an ATI instrument means a security (not being shares) which is:

(a) issued in Singapore but not through a foreign branch, and

(b) may be used to meet the capital adequacy requirement either of a Singapore incorporated bank with a full banking licence or of any other financial institution within the meaning of s 27A(6) of the *Monetary Authority of Singapore Act*.

¶6-300 Discount

A security may be traded at a discount before the date of its maturity. To discount a security means to sell that security at less than its face value. The discount therefore represents the income derived by the buyer who would receive face value when the security matures.

If the recipient of a discount is carrying on a regular business of discounting, such as a financial institution, the discount is taxable under s 10(1)(a). If the recipient is not, the discount is taxable under s 10(1)(d).

A discount accrues on the date it is realised. In *Willingale v International Commercial Bank Ltd* 52 TC 242, Lord *Salmon* distinguished a discount from interest in that "[a discount] is not earned nor does it accrue from day to day". Realisation occurs on the maturity date (redemption) of the financial instrument or the date it is sold, whichever is the earlier.

A discount accrues when the debt is redeemed and the discount is income chargeable to tax on the holder of the debt security immediately before such redemption. The amount of discount is deemed to be the difference between:

- the amount payable to the holder of the debt security upon the maturity or any earlier redemption of the debt security, and
- the amount paid by the first holder of the debt security for the issue of the debt security (s 10(8A)).

In *BFC v CIT* [2014] SGCA 39, the Court of Appeal (at para [48]) held that the word "discounts" in s 10(1)(d) refers not only to discounts in specific discounting transactions (eg the discounting of a bill of exchange) but also to discounts offered to purchasers of bonds in a bond issue.

Exemption of discount from debt securities

Individuals are tax exempt on discount (derived from Singapore on or after 1 January 2004) from debt securities which mature within one year from the date of issue of those securities (s 13(1)(ze); see ¶6-950). The tax exemption will not apply, however, if the discount is derived through a partnership in Singapore or is derived from a s 10(1)(a) source.

Subject to conditions, tax exemption also applies to discounts from qualifying debt securities which mature within one year from the date of issue of those securities and are issued during the period from 27 February 2004 to 31 December 2018 by (s 13(1)(aa)):

(a) any person who is not resident in Singapore and who does not have any PE in Singapore, and

(b) any person who is not resident in Singapore and who carried on any operation in Singapore through a PE in Singapore where the funds used by that person to acquire the qualifying debt securities are not obtained from the operation.

Unless approval has been granted, the above s 13(1)(aa) exemption does not apply to any discount derived from any qualifying debt securities where 50% or more of the

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issue of those securities is beneficially held or funded, directly or indirectly, at any time during the life of the issue by related parties of the issuer of those securities and where such discount is derived by:

(a) any related party of the issuer of those securities, or

(b) any other person where the funds used by such person to acquire those securities are obtained, directly or indirectly, from any related party of the issuer of those securities (s 13(2A)).

¶6-400 Charge

In the context of s 10(1)(e), a charge connotes a payment secured by a legal instrument on the income of the payer. An alimony or maintenance payment that a person receives under a court order or a deed of separation is taxable as a charge.

Thus, in *MMR v CIT* (2001) MSTC 5,305, the Singapore Board of Review said that the word "charge" in s 10(1)(e) must be understood in its ordinary meaning. A "charge" is a liability to pay money and it confers rights on a person entitled to it to have it legally enforced, if necessary. The maintenance payments that the taxpayer received from her former husband under a maintenance order made by the High Court were therefore taxable as income to her.

Maintenance payments received by a child under a maintenance order or a deed of separation and those received by a parent under a maintenance order made under the *Maintenance of Parents Act (Cap 167B, 1996 Revised Ed)* are not deemed to be income and are therefore not taxable (s 10(13)). Any sum accrued to a woman on or after 1 January 2011 by way of maintenance in accordance with a court order or deed of separation is exempt (s 13(1)(zo)).

¶6-500 Annuity

An annuity is a recurring annual payment. It can arise from:

(i) the purchase of an annuity policy from an insurance company

(ii) a gift or legacy, or

(iii) the sale of an asset or the surrender of a right.

It is not necessary for the payment to be a fixed sum of money.

An amount equal to 3% of the total consideration paid or payable for the purchase of the annuity is deemed to be income for s 10(1)(e) purposes (s 10(9)). However, the full amount of the annuity would be taxable if:

- the person deriving income from the annuity has previously received sums equal to the total consideration paid for the annuity (exclusive of the amounts deemed to be income), or
- the annuity was purchased by the employer of the person deriving on or after 1 January 1993 such income in lieu of pension or other benefit payable during his employment or upon his retirement.

Section 10(9) does not apply to annuity payments made under a life annuity purchased under the Supplementary Retirement Scheme (SRS) (s 10(9) and 10(10)) (see ¶6-910).

An annual repayment of capital, even though it may be referred to as an annuity, is not taxable under s 10(1)(e). For example, if the sale price of a property or business is to be paid by annual instalments of a fixed amount over 10 years, the instalments represent capital payments.

Certain types of annuity income that accrue to an individual on or after 1 January 2004 are now exempt under s 13(1)(ze)(iii) (conditions apply) (see ¶6-950). Consequently, the application of s 10(9) is now limited.

RENT

¶6-610 Introduction

Rent is payment for the use of real property or movable property. Rent received from the pure letting of property is taxable under s 10(1)(f). However, where a landlord is carrying on a business of letting real property, the rental income will be taxable under s 10(1)(a). Whether a business is being carried on is a question of fact. If a landlord provides a wide range of services, such as maintenance, cleaning, air-conditioning, lift and security services and lighting for common parts of the building, the rent would be taxable under s 10(1)(a).

¶6-620 Source of rental income

The source of rental income from real property under s 10(1)(f) is the tenancy of the property, and the location of the source is where the property is situated. The place where the tenancy agreement is signed and where the payment is made are not relevant.

The source of rental income from the hire or lease of movable property (eg cars and equipment) is deemed derived from Singapore under s 12(7)(d) if the conditions therein are satisfied (see ¶6-720).

¶6-630 Accrual and basis of assessment

Rental income accrues on the date on which it is due and payable.

Rent that is taxable under s 10(1)(f) in the hands of an individual is assessed on a preceding calendar year basis.

For example, assume that under a tenancy agreement, rental for December 2014 is due and payable on 1 December 2014. The individual landlord, however, receives it only in January 2015.

If the rent is a s 10(1)(f) source, it would be taxable for YA 2015 as it relates to the tenancy in December 2014.

If the landlord is a company, rental income (whether s 10(1)(a) or 10(1)(f) source) is assessed on a preceding accounting year basis. If rent constitutes a s 10(1)(a) source in the hands of an individual, the basis period would be the recipient's preceding accounting year (s 35(4)).

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¶6-640 IRAS concessions for s 10(1)(f) rent from real property

The IRAS applies the following concessions to taxpayers who derive rent from real property under s 10(1)(f).

Continuing source concession

Where the rental income is taxable under s 10(1)(f), expenses that are incurred during a vacant period between two periods of tenancy (eg repairs) or related to the vacant period (eg fire insurance premium) would, strictly, not be deductible in calculating the net rental income for that year. This is because each tenancy is regarded as a separate source of the income and any expenses incurred during the vacant period would not be deductible (see Chapter 7 at ¶7-100ff).

In practice, the IRAS adopts a continuing source concession under which the above types of expenses are allowed a deduction against the gross rental income. It appears that the concession applies so long as a subsequent tenant is obtained, which may be later in the same year or after the year-end. The source of rental income is therefore treated as if it were "continuing" throughout the year. The concession does not apply if a subsequent tenant is not found and the property is sold after a period of vacancy.

Where a property was continuously vacant for a period of at least 30 days or one calendar month on or before 31 December 2013, a landlord was able to claim a refund of the property tax for the vacant period if he met some conditions. If the vacancy occurs on or after 1 January 2014, a property tax refund is no longer available (IRAS e-Tax Guide "Property Tax: Removal of Refund of Property Tax on Unoccupied Buildings", published on 26 November 2013). This tax change reflects the policy that property tax, being a tax on wealth, is to be levied on the ownership of property regardless of whether it is occupied or vacant (Ministry of Finance's letters dated 10 December 2013 and 23 December 2013 to the *Straits Times*). Under the continuing source concession, a landlord would therefore be allowed to deduct property tax for a two-month vacancy in 2014 (as he would have incurred that expense, it being non-refundable) but not property tax for a two-month vacancy in 2013 which was refundable.

Subsequent tenancy concession

Where the rental income is taxable under s 10(1)(f), each tenancy is a separate source of rental income. Expenses incurred to secure a tenant each time (eg advertising expenses or housing agent commissions) are therefore not deductible because they are incurred to acquire a source of income; in other words, they are capital in nature (see Chapter 7 at ¶7-100ff). In practice, the IRAS allows a deduction for expenses incurred to secure a subsequent tenant.

Subsequent property concession

As explained above, expenses such as agents' commissions, and advertising and legal expenses that are incurred for getting the first tenant in respect of each property are not, in principle, deductible. As a concession, however, the IRAS allows deductions for such expenses against the rental income if the rental property is a subsequent property (see "Rental and Net Annual Value (NAV) expenses" found in the section "Individuals (For locals)" on the IRAS website at www.iras.gov.sg).

Example 1

Mr Chan rented out property A and subsequently property B. The expenses incurred to obtain the first tenant for property B are deductible against the rental income from property B.

Block basis concession

Where the rental income is taxable under s 10(1)(f), the rental income or loss from each property is in principle determined separately. The Act does not allow the set-off of s 10(1)(f) rental loss from one property against the s 10(1)(f) income from another rental property or any other income.

Example 2

If property A produces rental income of $4,000 but property B produces rental loss of $1,000 (both s 10(1)(f) sources), the rental loss of $1,000 would be disregarded and the taxable rental income would be $4,000.

In practice, the IRAS adopts the block basis concession. Under this concession, the s 10(1)(f) rental income or loss from all rental properties of the taxpayer will be aggregated to determine the overall net rental income or loss for that year. The "block" of properties refers to rental-income-producing properties. If a net rental loss results after applying the block basis concession, it cannot be set off against other sources of income for the same YA. Nor can it be carried forward for set-off against the statutory income of a future YA.

Note that from YA 2005, in the context of husband and wife both having rental income, a spouse is allowed to transfer a rental deficit to the other spouse, ie the rental deficit of the transferor will be set off against the rental income of the transferee (see s 37D, IRAS e-Tax Guide "Change to Assess the Income of a Husband and Wife as Separate Individuals", last revised on 26 May 2014, and Chapter 12 at ¶12-100ff). The ability to transfer a rental deficit between spouses will no longer be available from YA 2016.

Example 3

Assume that properties A and B were rented out for the whole year and that the rental was a s 10(1)(f) source of income. Property A was vacant for the period 1 June to 31 July; the net rental income from it was $27,000 after applying the IRAS continuing source concession. Property B was let out for the whole year, and the net rental loss was $38,000.

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As shown below, the block basis concession will give a more favourable result to the taxpayer than the strict position.

	Strict position $	Block basis concession $
A: net rental income	27,000	27,000
B: net rental (loss)	disregarded	(38,000)
Net rental income/(loss)	27,000	NIL*

* The resultant rental loss of $9,000 is a s 10(1)(f) loss and therefore disregarded for tax purposes.

2015 Budget announcement

Under current tax treatment, an individual who derives passive rental income from a residential property in Singapore can, subject to income tax rules, claim against such income a deduction of the actual deductible expenses incurred in producing the income. To substantiate his claims for deduction, he is required to keep the relevant records for a period of at least five years from the YA to which the claims relate (see Chapter 7 "Deductions" and Chapter 17 "Income Tax Administration" for details).

To simplify tax compliance, an individual who derives passive rental income in the basis period for YA 2016 or a subsequent YA from the letting of a residential property in Singapore (referred to as "qualifying rental income") can claim the rental expenses (excluding interest) based on 15% of the gross rental income in lieu of the actual amount of deductible expenses (excluding interest). He can continue to deduct any deductible interest expense against the qualifying rental income. This takes effect from YA 2016.

This tax change does not apply to any rental income derived:

a) by an individual through a partnership in Singapore, and

b) from a trust property.

The IRAS will publish details by May 2015.

ROYALTIES

¶6-700 Definition

The Act does not define the term "royalties". The ordinary meaning of a royalty is that it is a payment for the use of a patent, copyright or other intellectual property on a per unit basis. For example, an agreement may provide that a royalty is payable for every book or Video Compact Disc (VCD) sold.

The term "royalties" is sometimes used in a broader sense to include payments for the use of knowledge or information that falls short of property but that is protected as confidential information, such as secret processes. Such payments are called know-how payments. They are typically included in the definition of "royalties" in the "Royalties" article in Singapore's tax treaties (see ¶14-210 and ¶14-530).

Although the Act does not define "royalties", s 3 of the EEIA defines the composite expression "royalties or technical assistance fees". It includes:

(a) any royalties, rentals or other amounts paid as consideration for the use of, or the right to use, copyright, scientific works, patents, designs, plans, secret processes, formulae, trademarks, licences or other like property or rights

(b) income derived from the alienation of property or information mentioned in para (a), and

(c) other amounts paid in consideration of services rendered by a non-resident person or his employee in connection with the use of property or rights belonging to, or the initial operation of any plant, machinery or other apparatus purchased from, the non-resident person,

but does not include royalties, rentals or other amounts paid in respect of the operation of mines, quarries or other places of extraction of natural resources; or fees paid to an individual for the performance of professional services in Singapore other than as an employee.

The EEIA is to be construed as one with the Act (s 2 of the EEIA) unless the context otherwise requires. The above definition applies for purposes of the EEIA "approved royalties or fees" incentive. Paragraphs (a) and (b) of the definition would relate to "royalties", whereas para (c) relates to "technical assistance fees".

From 28 February 2013, the IRAS has applied the rights-based approach to characterise software payments and payments for the use of or the right to use information and digitised goods. The IRAS' former approach of treating all payments for the use of software as royalties for tax purposes no longer applies from that date. Essentially, the rights-based approach characterises a payment based on the nature of the rights transferred in consideration for the payment. It distinguishes between the transfer of a "copyright right" and the transfer of a "copyrighted article" from the owner to the payer (see IRAS e-Tax Guide "Rights-Based Approach for Characterising Software Payments and Payments for the Use of or the Right to Use Information and Digitised Goods" published on 8 February 2013). For details, see ¶13-620 on Royalties.

¶6-720 Source of royalties

In *FCT v United Aircraft Corporation* 7 ATD 318, an Australian company entered into an agreement with a US company under which the US company would:

(a) grant the Australian company the licence to manufacture and sell aircraft engines in Australia and NZ

(b) deliver manufacturing equipment with specifications

(c) despatch skilled US technical personnel to Australia (to be paid by the Australian company), and

(d) grant the right to use in Australia and NZ all designs of the US company relating to the engines covered by letters patent.

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The Australian company made all the payments in the US. The US company had no patents registered in Australia, and it did not carry on any business operations in Australia. It supplied all the information from the US. The Australian tax authorities assessed the taxpayer on the ground that the royalties were paid as a result of the use in Australia of the taxpayer's drawings, specifications and information. The High Court of Australia held that the payments made to the US company were not derived directly or indirectly from any source in Australia and were therefore not liable to tax in Australia:

> "The agreement was in reality an agreement for the communication of information which would facilitate the manufacture of the engines in Australia. The American company communicated the information in New York and received payment in New York . . .
>
> Before and after the agreement was made the American company owned no property in Australia of any kind. The making and the performance of the agreement did not vest in the American company any property in Australia. It owned no rights which could be regarded as located in Australia. It did not derive income from any property in Australia."

Based on the above case, it appears that if the user and payer company had been a Singapore resident company instead, the source of the income would not be in Singapore if the payments are made outside Singapore and no form of property is situated in Singapore.

To avoid the practical difficulty of having to determine the source of royalty income (including know-how payments) based on the facts of every situation, Singapore introduced the deemed-sourced provisions of s 12(7) in 1977.

Section 12(7) states:

> "There shall be deemed to be derived from Singapore:
>
> (a) royalty or other payments in one lump sum or otherwise for the use of or the right to use any movable property;
>
> (b) any payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information ("first limb") or for the rendering of assistance or service in connection with the application or use of such knowledge or information ("second limb");
>
> (c) . . . ; and
>
> (d) . . . ,
>
> which are borne, directly or indirectly, by a person resident in Singapore or a permanent establishment in Singapore (except in respect of any business carried on outside Singapore through a permanent establishment outside Singapore) or which are deductible against any income accruing in or derived from Singapore."

Take note that s 12(7)(a) refers broadly to royalty-type payments that are made for the licensing of intellectual property, where there is no transfer of ownership in the property. This contrasts with an assignment of movable property, where there is a transfer of ownership. The first limb of s 12(7)(b) refers to know-how payments while the second limb of s 12(7)(b) refers to technical assistance fees.

Note that the scope of s 12(7) also includes management fees and equipment hiring payments, among others. Where the recipient of the income that is deemed sourced in Singapore under s 12(7) is a non-resident person, withholding tax may apply. Section 12(7) is also to be read with s 12(7A). For a full discussion, see Chapter 13 (at ¶13-620ff).

¶6-730 Accrual and basis of assessment

Royalties accrue on the date they are due and payable.

Royalty income that is not a trading receipt is assessable under s 10(1)(f). The basis period would be the calendar year immediately preceding the YA concerned. However, the preceding accounting year basis would apply where:

(i) the royalty income under s 10(1)(f) accrues to a company that makes its accounts to a date other than 31 December (see ¶2-410), or

(ii) the royalty income is assessable under s 10(1)(a) (eg the recipient is a company that carries on the business of developing computer software for sale and licensing).

Example 4

Under a technology licensing agreement, royalties equal to 5% of the total sales revenue are payable. The amounts are payable on 31 January 2015, 31 May 2015 and 30 September 2015, based on the total sales for the four-month periods ending 31 January 2015, 31 May 2015, and 30 September 2015 respectively.

The royalties accrue on those three dates. If the recipient company adopts a 31 December year end, the royalties would all be taxable for YA 2016.

Tax incentive

The following income, whether it falls under s 10(1)(a) or 10(1)(f), is taxable based on the *lower* of the net amount (ie gross amount less deductible expenses and capital allowances where applicable) or 10% of the gross amount (s 10(14) to 10(16)):

(a) Income derived by any author, composer or choreographer, or any company in which he beneficially owns all the issued shares, from any royalties or other payments received as consideration for the assignment of or for the right to use the copyright in any literary, dramatic, musical or artistic work.

This concessionary tax treatment does not apply to royalties or payments received in respect of any work published in any newspaper or periodical.

(b) Income derived by an individual who is an inventor, author, proprietor, designer or creator of an approved intellectual property or approved innovation, or by any company in which he beneficially owns all the issued shares, from any royalties or other payments received as consideration for the assignment of or for the rights in the approved invention or approved innovation.

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The term "rights in the approved intellectual property or approved innovation" means the rights relating to any patent, copyright, trademark, industrial design, layout-design of integrated circuit, or know-how of an approved intellectual property or approved innovation, where a substantial part of the work in developing the intellectual property or innovation is done in Singapore (s 10(18)).

The scope of "innovation" extends beyond products to cover services.

"Innovation" means:

(a) any new product or new service, or any new method used in the manufacture or processing of goods or materials or in the provision of services, or

(b) any substantial improvement in any product or the provision of any service, or in any method used in the manufacture or processing of goods or materials or in the provision of services,

which involves novelty or originality (s 10(18)).

The scheme is administered by the Economic Development Board (EDB), and is granted for a period not exceeding five years.

Example 5

Frances derives gross royalty of $50,000 from licensing the copyright in her cookbook to a Singapore publisher. The royalty therefore qualifies for the above incentive. She incurs deductible expenses of $20,000.

Chapter

	$
Gross royalties	50,000
Less: allowable expenses	(20,000)
Net royalties	30,000

10% of gross royalties is $5,000.

As 10% of the gross royalties (ie $5,000) is less than the net royalties of $30,000, only $5,000 will be liable to tax.

2015 Budget announcement

As the tax concession on royalties and other payments from approved intellectual property or innovation under s 10(16) is assessed to be no longer relevant, it will be withdrawn from YA 2017.

¶6-800 Premiums

A premium is the consideration paid to the lessor for granting a lease or agreeing to assign a lease. It is usually a once-off payment. At common law, a premium is a capital sum, but some payments labelled as premiums may in substance be rent and thus income.

¶6-850 Any other profits arising from property used for residential purposes

From YA 2010, the income tax on the net annual value (NAV) of a property used for residential purposes has been removed.

(For details on the NAV, please see the 2011/2012 edition of this book.)

ANY OTHER GAINS OR PROFITS OF AN INCOME NATURE

¶6-900 Any other gains or profits of an income nature

Section 10(1)(g), the "sweep up" provision for other income, catches only income that does not fall under any of the preceding paragraphs of charge.

Section 10(1)(g) may apply to, for example:

(i) the gains derived from an isolated sale where the intention to carry on a business has not been established, and

(ii) commissions received for the occasional introduction of a buyer to a seller in a real property transaction where the recipient is not engaged in the business of a real estate agent.

Profits arising out of a transaction which is not an activity in the ordinary course of trade or business, or an ordinary incident of some other business activity

Based on the following two Singapore Board of Review cases, s 10(1)(g) could apply to the profits arising out of a transaction which is not an activity in the ordinary course of trade or business, or which is not an ordinary incident of some other business activity:

(i) *IB v CIT* [2005] SGDC 50 (profit held to fall under s 10(1)(g)), and

(ii) *HZ B v CIT* (2005) MSTC 5,508; [2004] SGDC 253 (profit held to be capital in nature).

IB v CIT [2005] SGDC 50

The taxpayer was an individual ordinarily resident in Taiwan. He transferred three properties that he had purchased in 1989 to Company C, a company of which he is a director and which he had incorporated in Singapore for the purpose of carrying on a manufacturing business in accordance with his application for permanent residence. Although the options for the sale and purchase of the three properties were exercised in 1990, the dates of transfer (legal completion) occurred in 1991. The net resultant gains to the taxpayer from the disposal were $1,161,097. Company C ceased its manufacturing activities in July 1991.

The Board had to decide on two issues:

(i) whether the gains were taxable as income under s 10(1)(g), and

(ii) when the gains accrued.

On issue (i), the Board held that the gains were income under s 10(1)(g).

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The Board took the view that the scope of the phrase "any gains or profits of an income nature" in s 10(1)(g) is very wide. **The ordinary meaning of "income" encompasses the amount of money or its equivalent received during a period of time in exchange for labour or services, from the sale of goods or property, or as profit from financial investments**. The Board therefore concluded that s 10(1)(g) can apply to profits arising out of a transaction which is not an activity in the ordinary course of trade or business, or an ordinary incident of some other business activity.

The means or mode of realising the profit need not be specific or precisely determined at the outset. But the words "gains or profits of an income nature" under s 10(1)(g) would exclude capital gains arising from the disposal of long-term investments.

On issue (ii), the taxpayer argued that the gains accrued when the options were exercised and the first YA would be YA 1991. The taxpayer therefore contended that no valid assessment could be raised after 31 December 1997 under the prevailing law at that time, and the Comptroller of Income Tax's (the "Comptroller") notice of assessment dated 28 December 1998 was out of time. On the other hand, the Comptroller submitted that the gains accrued only on the date of legal completion.

The Board noted that the Court of Appeal in *PR Pte Ltd v CIT* (2001) MSTC 7,409 had defined the word "accrue" to mean "to which any person has become entitled". The Board was of the view that, in the absence of full arguments and submissions on all the terms of the contract between the taxpayer and Company C, the mere receipt of replies to requisitions did not in itself address the issue of the taxpayer's entitlement to the full consideration of the sale. There was no evidence that Company C (the purchaser) had waived the right to make further requisitions or that all conditions precedent were fulfilled. Moreover, the circumstances and terms pertaining to Company C's rent-free occupation of the factory premises before the sale were not fully accounted for by the taxpayer before the Board. The Board therefore concluded that the gains accrued not before 31 December 1990, but in 1991. The Comptroller's assessment was therefore not time-barred.

HZ B v CIT (2005) MSTC 5,508; [2004] SGDC 253

The taxpayers HZ and B (father and son) purchased a shophouse from the Housing and Development Board (HDB) under the Sale of Tenants Shops Scheme. The HDB accepted the taxpayers' application on 15 October 1993. The purchase was completed on 13 January 1994, and the taxpayers were registered as lessees under the *Land Titles Act (Cap 157)* for that property from 1 October 1993. On 4 February 1994, the taxpayers granted an option to sell the shop to C for $1.3m, which C exercised on 8 February 1994. On 18 March 1994, the HDB approved of the resale. The sale of the shop resulted in a gain of $580,784 and each taxpayer's share of the profit was $290,392.

The issue was whether the gains from the sale were income taxable under s 10(1)(g). The Board of Review held that the gains were not taxable.

The Board accepted the proposition in *IB v CIT* concerning the scope of s 10(1)(g) (summarised under issue (i) of the *IB* case above).

Based on the facts in *HZ B*, however, the Board concluded that the taxpayers had purchased the shophouse as a long-term investment and therefore the gains arising from its disposal were not income under s 10(1)(g).

The Board found that the taxpayers (HZ and B) had sufficient savings to finance the monthly outlays for loan and interest expenses and property tax. This could allow them to continue their normal business, and if that had not been sufficiently profitable, the taxpayers would have been able to change to letting out the premises and obtain sufficient rental income to meet the outgoings given the market situation in 1993.

There was evidence that the first taxpayer HZ was serious in getting a tenant to replace his business at the shop, and also good reason why the taxpayers purchased the shop from HDB in the first place. The HDB scheme gave a generous discount and it might not be repeated on the same terms. Furthermore, having ownership of the shophouse would protect the taxpayers from future rental hikes.

Given that the taxpayers were able to finance the regular outgoings relating to the purchase of the shop, the Board considered that the fact that no feasibility study had been done was not significant. The purchaser had made an attractive offer and, as HZ (the father) had a heart problem, he decided to retire early by selling the shop and using the proceeds to finance his sons' further education. The Board also regarded the fact that the purchase and sale of the property occurred in "a rising property market" was at best neutral, as there was no evidence to show a specific trend for properties similar to the one the taxpayers had purchased.

The Board also said that the holding period ought to be computed from 1 October 1993 (the date the taxpayers became a lessee), or otherwise 15 October 1993 (the date the HDB accepted the taxpayers' application to purchase the shop), to the date of exercise of option by purchaser C on 8 February 1994. The Board said, however, that the fact that the holding period was relatively short did not in itself automatically mean that it was a purchase for resale to make a quick profit.

¶6-910 Withdrawals from Supplementary Retirement Scheme

The Supplementary Retirement Scheme (SRS) is part of the Singapore Government's strategy to address the financial needs of an ageing population. The SRS complements the CPF. The SRS took effect from 1 April 2001 and is operated by the private sector. The approved SRS operators are the Development Bank of Singapore Ltd, Overseas-Chinese Banking Corporation Ltd and United Overseas Bank Ltd.

Unlike the CPF scheme, participation in the SRS is voluntary. Contributions to the SRS can only be made by employees and self-employed individuals to their own accounts. The maximum SRS contribution that Singapore citizens and permanent residents can make for the year 2014 is $12,750; the corresponding amount for a foreigner is $29,750. Tax reliefs are granted for SRS contributions under s 39(2)(o) (see ¶12-285).

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The SRS member can make use of the funds in his SRS account for investment in savings or investment products offered under the SRS and for disbursing any charges relating to the operation of the SRS account. Such use of funds is not deemed to be a withdrawal from the SRS account (s 10L(10)). All investment gains accumulate tax free in the SRS account (s 13(1)(d)).

Income tax is payable only upon withdrawals from the SRS account. Subject to some conditions, 50% of the amount of such withdrawals is deemed to be income taxable under s 10(1)(g). Up to 30 June 2015, all withdrawals from SRS must be in cash; withdrawals in the form of transfer of investments out of the SRS account are not permitted (see below for tax position from 1 July 2015).

Withdrawal period

Withdrawals from the SRS may be spread out over a period of up to 10 years from the retirement age. From YA 2009, once a member makes a withdrawal upon or after reaching the prescribed retirement age prevailing at the time when he made his first contribution to the SRS account, he must withdraw the funds in the SRS account within 10 years (s 10L(5)).

An SRS member will be taxed under s 10(1)(g) on 50% of the sum withdrawn during the prescribed withdrawal period if:

(a) he makes the withdrawal on or after the prescribed retirement age prevailing at the time he made his first contribution to the SRS account (s 10L(3)(b))

(b) he makes the withdrawal on the ground that he is physically or mentally incapacitated from ever continuing in any employment, is found to be of unsound mind or is suffering from a terminal illness or disease (s 10L(3)(c)), or

(c) he is not a citizen or permanent resident of Singapore on the date of withdrawal and withdraws all the funds standing in the SRS account at the same time, having maintained his SRS account for a continuous period of at least 10 years from the date of the member's first contribution (s 10L(3)(a)).

Tax position from 1 July 2015

Before 1 July 2015, SRS members who have reached the retirement age can make withdrawals only in the form of cash. This necessitates the liquidation of SRS investments, which entails transaction costs for SRS members.

From 1 July 2015, SRS members will be allowed to withdraw their SRS investments by transferring those investments into another investment account. Similar to cash withdrawals from the SRS accounts, the value of such SRS investments withdrawn will be brought to tax.

Consequently, s 10L has been amended to treat the prescribed value of any investment made using SRS funds as sums withdrawn from an SRS account, where such investment has been deducted from the balance in the SRS account following an approval by the SRS operator concerned. The value of the investment which has been so deducted will then be treated as withdrawn from the account and taxable under s 10L; the tax treatment is similar to that for cash withdrawals described above, including the conditions for the 50% preferential taxation to apply). Regulations may be made to provide for, among other things, the manner and time of valuation of any investment.

Another consequential amendment is that for s 10L(3)(a) (see item (c) above) to operate in a case in which SRS funds have been used for investment, each investment must either:

(i) have been liquidated, returned to the SRS account and withdrawn together with the rest of the funds in the account, or

(ii) have been approved by the SRS operator to be deducted from the balance in the SRS account on the same date as the date of the withdrawal of the rest of the funds in the account.

See generally s 10L(3D) as amended, s 10L(3E), (3F) and (12A).

Withholding tax

Withdrawals by non-Singapore-citizen SRS members are subject to withholding tax under s 45E and the new s 45EA inserted by the *Income Tax (Amendment) Act 2014* (see ¶13-100, ¶13-140 and ¶13-673).

Amount remaining in SRS account at the end of the withdrawal period

Where an SRS member has not withdrawn all of the remaining SRS funds at the end of the 10-year withdrawal period, that amount remaining in the SRS account at the end of the withdrawal period will be deemed to have been withdrawn and 50% of that amount will be taxed as his income under s 10(1)(g) (s 10L(6) and (7)).

Premature withdrawals

Where a withdrawal is made before the statutory retirement age prevailing at the time of the first contribution, the whole sum that is withdrawn will be subject to tax, and a 5% penalty for premature withdrawal will be imposed. The Minister may, for any good cause, remit, wholly or in part, any such penalty payable by any SRS member (s 10L(2A)). The 5% penalty will not apply in the following circumstances:

(a) death

(b) permanent incapacitation

(c) bankruptcy, and

(d) full withdrawal by a foreigner who has maintained his SRS account for at least 10 years from the date of his first contribution (s 10L(2)).

Excess contributions

Where any contribution by an SRS member in any year to his SRS account exceeds the SRS contribution cap for that year (excess contribution), an amount (as set out in s 10L(4)) will have to be withdrawn by the SRS member from the SRS account by 31 December of the year in which the Comptroller notifies him of the excess contribution, and that amount is deemed to be the member's income taxable under s 10(1)(g) for that year (s 10L(4)).

Life annuity payments

Where an SRS member purchased a life annuity under the SRS, only 50% of any annuity payment made under that life annuity is deemed to be his income under s 10(1)(g). Section 10L(8) sets out the date of accrual of such income.

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Death of SRS member

Where an SRS member dies, any sum standing in his SRS account is deemed to be withdrawn on the date of his death and 50% of the sum is deemed the member's income taxable under s 10(1)(g) (s 10L(9)).

Certain payments to SRS member regarded as withdrawal

Where an SRS member has used funds in his SRS account for any investment, any payment to the SRS member thereafter of the following amounts is regarded as a withdrawal by the SRS member from his SRS account (s 10L(3A)):

(a) any gains or profits from the investment made

(b) any part of the funds the SRS member invested, or

(c) any proceeds from the sale or liquidation of such investment.

This provision applies even if the SRS account has been closed before the payment is made. It does not apply, however, to any payment received after any balance remaining or sum standing in the SRS account is deemed withdrawn under s 10L(6), (7) or (9) (see above).

See also the tax position from 1 July 2015.

Definitions

The terms "life annuity", "prescribed retirement age", "SRS account", "SRS contribution cap", "SRS member", "SRS operator" and "Supplementary Retirement Scheme" or "SRS" are defined in s 2.

¶6-950 Tax exemption for individuals

The following types of income are exempt for individuals:

(a) All foreign income received by individuals in Singapore (see item (d) below for foreign income received in Singapore by a resident individual through a partnership in Singapore) (s 13(7A)).

(b) The following Singapore-sourced income derived from 1 January 2004 (the exemption does not apply to income derived by the individual through a partnership in Singapore or from the carrying on of a trade, business or profession (TBP)) (s 13(1)(ze)):

   (i) any interest from debt securities

   (ii) any discount from debt securities which mature within one year from the date of issue of those securities

   (iii) any income from an annuity (except income from an annuity purchased by the employer of an individual in lieu of any pension or other benefit payable during his employment or upon his retirement, and any annuity purchased under the SRS)

(iv) any income from any life insurance policies (excluding income from policies for insurance against loss of profits)

(v) any distribution made by any collective investment scheme constituted as a unit trust (including any real estate investment trust), that is income or deemed income to the individual to which unit holders are entitled to from 1 January 2004 (s 13(1)(ze)(v)), and

(vi) any fee or compensatory payment from securities lending and repurchase arrangements.

(c) Any distribution made by any registered business trust (this exemption applies to individuals and other persons) (s 13(1)(zg)).

(d) The following foreign income received in Singapore by an individual resident in Singapore through a partnership in Singapore, if the conditions under s 13(9) (see ¶14-330) are satisfied:

(i) any foreign dividend

(ii) any income derived from any professional, consultancy and other services rendered in any territory outside Singapore only if the Comptroller is satisfied that the income is derived from outside Singapore.

(e) The following income that is derived by the individual not through a partnership in Singapore and not from the carrying on of a TBP:

(i) any amount payable from Islamic debt securities from 1 January 2005 (s 13(1)(zf))

(ii) any distribution made by any trustee of a real estate investment trust of certain specified types of income (s 13(1)(zh))

(iii) any discount from debt securities that is derived from Singapore (from 17 February 2006) (s 13(1)(zi)(i))

(iv) any distribution made by any restricted Singapore scheme out of income derived from Singapore or received in Singapore from 17 February 2006, that is income or deemed income of the individual (s 13(1)(zi)(ii))

A "restricted Singapore scheme" means a collective investment scheme constituted as a unit trust that is a restricted Singapore scheme within the meaning of the regulations made under the *Securities and Futures Act (Cap 289)* f•r the purpose of s 305 of that Act (s 13(16)).

(v) any income from any structured product offered by a financial institution derived from Singapore in the basis period relating to YA 2008 and subsequent YA (s 13(1)(zj))

(vi) any prepayment fee, redemption premium or break cost from debt securities derived from Singapore from 15 February 2007 (s 13(1)(zk)), and

(vii) such other income directly attributable to debt securities as may be prescribed by regulations that is derived from Singapore on or after a prescribed date (s 13(1)(zl)).

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(f) Any contributions to the CPF in respect of an individual, and any cash payment to an individual, made by the Government on or after 17 February 2012, under:
   (i) the Workfare Bonus Scheme
   (ii) the Workfare Income Supplement Scheme
   (iii) the Workfare Special Payment Scheme, and
   (iv) the Workfare Special Bonus Scheme (s 13(1)(zp) and (zq)).

(g) Any contribution by the Government to the Post-Secondary Education (PSE) account, or an account in the CPF, of an individual who is or was a national serviceman, as part of the National Service Recognition Award (s 13(1)(zr)).

In addition, any voluntary cash contribution made by a self-employed individual (of a prescribed description) to his CPF Medisave account:

(a) if it was made in the year 2011 or 2012, qualifies for exemption up to $1,500 annually (detailed conditions apply) (s 13(1)(jc)), and

(b) if it is made in the year of 2013 or subsequent year, qualifies for exemption up to $1,500 less any previous contributions made to that Medisave account in that year by him which is not deemed to be income under s 10C(5A) (s 13(1)(jd); see also ¶5-240).

CHAPTER 7

DEDUCTIONS

¶7-100 Introduction

Under the charging provision of s 10(1) of the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act"), tax is imposed on income, ie gains or profits of an income nature. Income tax is not a tax imposed on gross receipts but on an amount after the deduction of expenses and other items as set out under the Act. The issue of what is a deductible expense and what is not is covered in this chapter. The concept of "income" is not defined but it is opposed to capital gains. Capital gains are not taxable in Singapore; the corollary is that capital expenditure is not deductible for income tax purposes.

Section 14 provides what expenses are deductible (the positive test) and s 15 provides what are not deductible (the negative test). For an expense to be deductible in Singapore, it must satisfy s 14 and not be prohibited under s 15.

Section 14(1) sets out the general deduction formula, followed by a list of expenditure that are specifically deductible (s 14(1)(a)–14(1)(h)). Other expenses are deductible subject to restriction (eg expenses on certain types of motor cars under s 14(3)).

The Act also provides for:

- further deductions, ie deduction of expenditure in addition to the actual amount incurred (eg s 14B, 14C, 14E, 14K, 14L and 14M)
- special deductions, ie deduction of expenditure that would not have been allowed under the general deduction formula (eg s 14A, 14D, 14F, 14H, 14I, 14N 14O, 14U and 14X)
- deduction for treasury shares transferred under an employee equity-based remuneration scheme (s 14P).

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In the High Court case *ABD Pte Ltd v CIT* (2010) MSTC ¶70-003; [2010] 3 SLR 609, *Andrew Phang* JA outlined a composite and integrated approach comprising two related propositions, one general and the other specific, to help ascertain whether a specific item of expenditure is capital or revenue in nature (see ¶7-220 under "Capital versus revenue expenditure").

Note that a broad-based tax incentive, the Productivity and Innovation Credit (PIC), is available to all businesses for a five-year period from the year of assessment (YA) 2011 to YA 2015. This incentive was first announced during the 2010 Budget and subsequently enhanced in the 2011, 2012 and 2013 Budgets. In the 2014 Budget, the incentive was extended to YA 2018 and further enhanced for qualifying small- and medium-sized enterprises. The PIC provides significant tax deductions and allowances for investments in a range of six specified activities along the innovation value chain (see ¶7-750 for more details).

DEDUCTIONS SPECIFICALLY PROHIBITED

¶7-200 Deductions specifically prohibited

Section 15 prohibits a deduction for certain types of expenses. It begins as follows:

> "Notwithstanding the provisions of this Act, for the purpose of ascertaining the income of any person, no deduction shall be allowed in respect of—"

Based on the wording, if an expense is deductible under s 14 but its deduction is prohibited under s 15, s 15 will prevail.

¶7-210 Section 15(1)(a) and (b)

Section 15(1)(a) prohibits the deduction of domestic or private expenses except as provided by s 14(1)(g). Domestic or private expenditure would include household expenses such as food, clothing, costs of engaging domestic helpers, and generally all expenses of a private or personal character.

Section 15(1)(b) prohibits "any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income". This provision reinforces the requirements of the general deduction formula in s 14 (see ¶7-300).

Note that the prohibitions under s 15(1)(b) do not apply to expenditure deductible under the following sections (s 15(2)):

- expenditure on patenting cost (s 14A)
- expenditure on research and development (R&D) (s 14D and 14DA)
- further deduction for expenditure on R&D (s 14E)
- management expenses of investment companies (s 14F)
- expenditure on building modifications for the benefit of disabled employees (s 14H)
- provisions by banks and qualifying finance companies for doubtful debts and diminution in value of investments (s 14I)
- further or double deduction for overseas investment development expenditure (s 14K)

- deduction for hotel refurbishment expenditure (s 14M)
- deduction of upfront land premium (s 14N)
- deduction for special reserves of an approved general insurer (s 14O)
- deduction for treasury shares transferred under an employee equity-based remuneration scheme (s 14P)
- deduction for shares transferred by special purpose vehicle (SPV) under an employee equity-based remuneration scheme (s 14PA)
- deduction for renovation or refurbishment expenditure (s 14Q)
- deduction for qualifying design expenditure (s 14S), and
- deduction for statutory and regulatory expenses (s 14X).

¶7-220 Section 15(1)(c) and (d)

Withdrawals of capital from a business and capital expenditure are not tax deductible. Section 15(1)(c) prohibits the deduction of "any capital withdrawn or any sum employed or intended to be employed as capital" unless the payment falls within s 14(1)(a). Section 15(1)(d) prohibits the deduction of "any capital employed in improvements".

Section 15(2) also provides that s 15(1)(d) does not apply to expenditure deductible under s 14A, 14D to 14F, 14H, 14I, 14K, 14M to 14Q and 14S. See ¶7-810 for more details on these deductions.

"Improvement" versus "repair"

The expenses incurred on "improvement" must be distinguished from expenses incurred for "repair" as the latter is revenue expenditure and tax deductible. An improvement to an asset suggests greater efficiency or an enhancement in its function, whereas a repair merely makes good the defect and restores the asset to its former working condition. A deduction for expenses incurred for repairs is provided for under s 14(1)(c) and is covered in ¶7-430.

Capital versus revenue expenditure

Generally, expenditure that relates to the acquisition of a source of income or a capital asset would be of a capital nature and would not be deductible. On the other hand, expenditure relating to the performance of profit-earning operations would be of a revenue nature and would be deductible for tax purposes.

In a 1946 case, it was held that the following distinctions may be helpful in distinguishing between capital and revenue expenditure (*Hallstroms Pty Ltd v FC of T* (1946) 72 CLR 634; (1946) 3 AITR 436):

> "between the acquisition of the means of production and the use of them; between establishing and extending a business organisation and carrying on the business; between the implements employed in work and the regular performance of the work in which they are employed; between an enterprise itself and the sustained effort of those engaged in it."

However, the line of demarcation is often fine and there is no perfect test that can be used to distinguish one from the other. Various tests have been considered and applied by the courts in distinguishing capital from revenue expenditure. The

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applicability of the following four tests (A) to (D) was considered in the Singapore High Court case *ABD Pte Ltd v CIT* (2010) MSTC ¶70-003; [2010] 3 SLR 609. The High Court in that case proposed a composite and integrated approach to help ascertain whether an item of expenditure is of capital or revenue nature (see (E) below).

(A) The "once and for all" test

This test looks at whether an expense is a recurring expense or a "once and for all" payment. Generally, an expense of a revenue nature is more likely to be recurrent, whereas an expense of a capital nature would tend to be one that is made once and for all. However, this test on its own may not be conclusive.

This test was formulated in *Vallambrosa Rubber Co Ltd v Farmer* (5 TC 529) in which Lord *Dunedin* said:

> "Now, I don't say that this consideration is absolutely final or determinative, but in a rough way, I think it is not a bad criterion of what is capital expenditure as against what is income expenditure to say that capital expenditure is a thing that is going to be spent once and for all, and income expenditure is a thing that is going to recur every year."

(B) The "enduring benefit of the trade" test

This test looks at whether an asset or an advantage of an enduring nature has been created.

In *Atherton v British Insulated and Helsby Cables Ltd* 10 TC 155, the issue was whether a lump sum contribution by a company in establishing a pension scheme for employees was deductible. Viscount *Cave* said:

> "But when an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, I think there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital."

In that case, the expenditure was held to be of a capital nature — it obtained for the company the substantial and lasting advantage of being able to secure and retain the services of a contented and efficient staff.

The word "capital" connotes permanency and capital expenditure is, therefore, closely akin to the concept of securing something of a lasting or enduring benefit to an enterprise. Although an enduring benefit need not be of an everlasting character, it should not be so transitory as to be short-lived. Revenue expenditure, on the other hand, is operational in perspective and solely intended for the furtherance of the business of the enterprise.

(C) Expenditure relating to fixed or circulating capital

This test centres on the distinction between fixed and circulating capital. If the expenditure relates to fixed capital (ie fixed assets), it will not be deductible. If the expenditure relates to circulating capital (ie stock-in-trade), it will rank for deduction. Fixed capital is what the owner turns to profit by keeping it in his possession; circulating capital is capital that is turned over, and in the process of being turned over, yields profit or loss (*John Smith & Sons v Moore* (12 TC 266)).

The paragraphs below discuss a Singapore case, *IA v CIT*, where the nature of the borrowings and the character of the relevant borrowing costs, including interest cost incurred in connection with the raising of, and the use of, borrowings were considered. The issue was whether these costs were related to fixed or circulating capital.

Borrowing costs other than interest

In *IA v CIT* (2007) MSTC 7,521; [2005] SGHC 229, the issue was whether certain expenses incurred in connection with a syndicated loan by the taxpayer were deductible for YA 1998 and YA 1999, or whether they were prohibited by s 15(1)(c), being of a capital nature. This case was finally decided by the Court of Appeal in 2006. The decisions of the High Court and Court of Appeal are discussed below after the facts of the case.

The taxpayer was a company incorporated in Singapore on 5 April 1993 as a property developer. To develop the condominium project in question, the taxpayer obtained a syndicated loan for facilities totalling $113m. The interest rates payable on the syndicated loan ranged from 4.3834% to 6.25% for the relevant years. Under the syndicated loan agreement, the taxpayer was only allowed to use the loan proceeds to finance the purchase and development of its trading stock. The total amount of interest of $4.9m payable under the syndicated loan for the taxpayer's financial year 1994 was allowed by the Comptroller of Income Tax (the "Comptroller").

The taxpayer also incurred "borrowing expenses" in connection with the syndicated loan, namely underwriting fee, agency fee, facility fee, solicitors' fees and disbursements, and property valuer's fees. As at 30 September 1994, the taxpayer had revenue receipts amounting to about $170m from progress payments made by purchasers of the apartments in the condominium project. These sums were quarantined in a "project account", and they could only be withdrawn if the taxpayer furnished a banker's guarantee of an amount equivalent to the amount to be withdrawn.

To be released from its obligation to pay the substantial amounts of interest under the syndicated loan, the taxpayer obtained on 13 October 1994, bank guarantees for a total sum of $100m to secure the release of $100m from the project account. In connection with the early repayment of the syndicated loan, the taxpayer incurred a prepayment penalty. In addition, the taxpayer also incurred bank commission, agency fees and solicitors' fees and disbursements in connection with the bank guarantees. The total amount of the bank guarantee commission and agency fees was much lower than the estimated interest payable of around $11m under the syndicated loan for the period from 15 October 1994 to the issue of the temporary occupation permit in November 1996. The result was that the repayment of the syndicated loan in full on 14 October 1994 using the money withdrawn from the project account reduced the taxpayer's total interest expense and thereby increased its taxable profit. The Comptroller disallowed the taxpayer's claim for deduction for:

(i) borrowing expenses

(ii) prepayment penalty, and

(iii) guarantee expenses (collectively, the "relevant expenses"),

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for the relevant YAs on the basis that they were prohibited as capital expenditure under s 15(1)(c).

Reversing the decision by the Singapore Board of Review, the High Court held that **all** the relevant expenses were deductible.

The High Court also held that the prohibition in s 15(1)(c) (ie no deduction for any capital withdrawn or any sum employed or intended to be employed as capital) applies only to the principal loan itself and not to these expenses.

Based on the agreed facts before the Board, the syndicated loan was obtained to acquire trading stock. The High Court held that the loan was an integral part of the profit-earning activities of IA, as the purpose of the loan was to acquire trading stock. The purpose of the syndicated loan was to acquire land and also to pay for part of the development costs, and the loan was used as such. The High Court held that the land was not acquired as an enduring asset to be kept in the taxpayer's possession, but to be sold as part of the common property with the apartments. As the purpose of the syndicated loan was revenue in nature (ie to acquire trading stock), the borrowing expenses were therefore revenue in nature and deductible under s 14(1).

The High Court rejected the Comptroller's submission that, by incurring the prepayment penalty, the taxpayer had obtained an enduring benefit by securing the release from its contractual obligations under the syndicated loan and thereby enjoying interest savings. The High Court said that the prepayment penalty was incurred to avoid paying further interest under the loan, and it was therefore revenue in nature and deductible under s 14(1).

As for the guarantee expenses, the High Court said that although there was strictly no second loan, the bank guarantees nevertheless constituted a second facility; they still amounted to a refinancing which enabled the release of funds to pay the loan. As the purpose of the loan was revenue in nature (being to acquire trading stock), the guarantee expenses were also deductible under s 14(1).

The Comptroller then appealed against the High Court decision. The Court of Appeal (*CIT v IA* (2007) MSTC 7,549; (2006) SGCA 24) dismissed the appeal and upheld the decisions of the High Court on the deductibility of the relevant expenses. Two issues were considered by the Court of Appeal:

(1) The nature of the loan and the character of the relevant expenses.

(2) Whether the relevant expenses satisfied the requirement of s 14 and were not prohibited by s 15.

Two tests to determine the nature of the loan and therefore the character of the relevant expenses were discussed — the "purpose" test and the "temporary and fluctuating" test.

Two guidelines for the "purpose" test were offered. Firstly, to ascertain the purpose of the taxpayer obtaining the loan, one has to ascertain whether there exists a sufficient linkage or relationship between the loan and the main transaction or project for which the loan has been taken. If there is no, or insufficient, linkage, then the assumption is that the sole purpose of the loan is to augment or add to the capital structure of the company and that the loan is therefore capital in nature. The judge said that "a sufficient linkage would clearly be present if the evidence demonstrates that the loan was taken in order to finance the main transaction or project". Secondly, once the sufficient linkage has been ascertained, one has to determine whether the main transaction or project itself is of a capital or revenue nature. If the project itself is of a capital nature, it follows that the loan linked to the project cannot possibly be of a revenue nature. Conversely, if the loan is linked to a project which is of revenue nature, the loan cannot possibly be of a capital nature.

Under the "temporary and fluctuating" test, the loan would have the character of a revenue nature if the loan was a temporary and fluctuating one. If the loan was not a temporary and fluctuating one, then it follows that the loan has the character of a capital transaction. The Court also commented that the size of the loan, the lack of temporariness or the recurrence of the loan cannot be determinative factors of the nature of the loan, whether it is revenue or capital in nature.

Although both tests are not the same, they are not incompatible. The judge held that the tests complement each other and ruled that the purpose test is the primary test. The purpose test had also been accorded primacy in the *Wharf Properties* case (*Wharf Properties Ltd v Commissioner of Inland Revenue* [1997] AC 505). The Court also ruled that the relevant time for ascertaining the character of the loan is at the time the loan was entered into.

As for the second issue of the requirement under s 14(1) for a nexus between the incurrence of expenses and the production of income, the Court applied the wider nexus test (upheld in the Court of Appeal case *Pinetree Resort Pte Ltd v CIT* [2000] 4 SLR 1) that "the business has to be looked at as a whole set of operations directed toward producing income, in which case an expenditure which is not capital is usually considered as having been incurred in gaining or producing income". As the prepayment penalty and the guarantee expenses permitted IA to obtain substantial interest savings, thereby increasing IA's overall profitability, these expenses were regarded as having been incurred in the production of income.

As for the guarantee expenses, the Court held that they did not bring into existence any asset or advantage for the enduring benefit of IA's trade. The early repayment of the loan resulted only in revenue benefit, ie considerable economy, saving in working expenses and also improved efficiency for IA's business.

Nature of interest expense

The Court of Appeal agreed with the Privy Council's view in the *Wharf Properties* case that the purpose of the loan during the period for which the interest payment was made is critical to whether the interest expense counts as a capital or revenue expense.

The Court of Appeal also agreed with the decision in another Court of Appeal case *T Ltd v CIT* (2007) MSTC 7,609; [2006] SGCA 13 whereby the High Court's interpretation that the s 15(1)(c) prohibition applies only to the principal loan was reversed. Justice *Tay Yong Kwang* in the *T Ltd* case said, "Interest is derivative in nature. It owes its existence to a loan. Whether it is a capital or a revenue expense depends on the purpose for which the loan is employed. If the loan is used for developing a capital asset, the interest payable on that loan is not deductible for tax purposes. If the loan is employed in acquiring income, then interest thereon becomes deductible under s 14(1)(a)".

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Following these Court of Appeal decisions, the nature of the interest payments could be capital in nature and be prohibited under s 15(1)(c). Accordingly, as long as the interest was payable on a loan to acquire a capital asset, the interest would be of capital nature and would not be deductible unless it satisfies the requirement in s 14(1)(a) that the interest was payable on capital employed in acquiring the income (see ¶7-410 for further discussions on interest expense).

(D) The "identifiable asset" test

This test seeks to identify an asset. Where the expenditure was incurred on the acquisition of an asset, that expenditure should be regarded (in the first instance) as capital expenditure. This test was described by Lord *Wilberforce* in *Tucker (Inspector of Taxes) v Granada Motorway Services Ltd* [1979] 1 WLR 683 as follows:

> "I think that the key to the present case is to be found in those cases which have sought to identify an asset. In them it seems reasonably logical to start with the assumption that money spent on the acquisition of the asset should be regarded as capital expenditure."

(E) Proposed composite and integrated approach — ABD Pte Ltd v CIT case

One of the tax issues in the Singapore High Court case *ABD Pte Ltd v CIT* was whether the cost of acquiring the land and of constructing the building constitutes capital or revenue expenditure. If it was capital expenditure, it would have been prohibited by s 15(1)(c) and hence not deductible.

The High Court considered the various tests formulated in past tax cases and attempted to consolidate the various tests into a composite and integrated whole. The Court held that it was evident that consolidation is necessary because of the relationships among the various tests and elaborated as follows:

(a) The "once and for all" test can be subsumed into the "enduring benefit of the trade" test.

(b) There is an overlap (or even complete coincidence or equivalence) between the "enduring benefit of the trade" test and the "fixed capital and circulating capital" test.

(c) There is a possible overlap (or even complete coincidence or equivalence) between the "enduring benefit of the trade" test and the "identifiable asset" test.

In the High Court's view, the "enduring benefit of the trade" test, despite its weaknesses, was probably still, in substance at least, the main test.

The High Court then advocated an approach comprising two related propositions, one general and the other specific, being helpful legal principles that can aid the Court in ascertaining whether a particular expenditure is of a capital or revenue nature. These guidelines are to be applied to the specific facts of the case.

(i) The first principle (general)

The general principle is that the Court must look closely at the purpose of the expenditure and ascertain whether such expenditure either:

- created a new asset (or strengthened an existing asset), or
- opened new fields of trading not hitherto available to the taxpayer.

The opening of a new field of trading can be viewed as a more specific example of the creation of an asset insofar as a new field of trading may be a new asset which inures to the benefit of the taxpayer.

(ii) The second principle (comprising specific guidelines)

To ascertain whether an asset has been created or strengthened, or a new field of trading has been opened, one has to apply the various tests. The Court considered the enduring benefit test in the *Atherton* case to be the main test. The Court also considered the following observations mooted by the different courts to be cogent and practical:

- observing the demarcation between:
  - the cost of creating, acquiring or enlarging the permanent (not necessarily perpetual) structure of which the income is to be the produce or fruit, and
  - the cost of earning that income itself or performing the income-earning operations

  (per Viscount *Radcliffe* in *Commissioner of Taxes v Nchanga Consolidated Copper Mines Ltd* [1964] AC 948 at 960)
- the three characteristics considered by *Dixon* J in the High Court of Australia decision *Sun Newspapers Limited v The Federal Commissioner of Taxation* (1938) 61 CLR 337:
  - the character of the advantage sought, and in this its lasting qualities may play a part
  - the manner in which it is to be used, relied upon or enjoyed, and in this and under the former head recurrence may play its part, and
  - the means adopted to obtain it; that is by providing a periodic reward or outlay to cover its use or enjoyment for periods commensurate with the payment or by making a final provision or payment so as to secure future use or enjoyment.

  The Court also stated that the five basic propositions on capital/revenue receipt (see ¶4-500) would "be applicable as a matter of general principle to expenditure as well".

The Court then summarised the second principle as follows:

(a) In ascertaining whether the expenditure relates to the creation of a new asset (or the strengthening thereof) or a new field of trading, the purpose of the expenditure must be ascertained. The Court should have regard to the following guidelines bearing in mind that such guidelines are not exhaustive by themselves:

- the manner of the expenditure, in particular, whether the expenditure was a one-time expenditure or a recurrent expenditure, and
- the consequence or result of the expenditure.

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Although a one-time expenditure is not conclusive in and of itself, a one-time expenditure would tend to suggest that such expenditure is capital in nature. Expenditure is likely to be revenue in nature if the expenditure is in relation to assets which are of themselves the stock-in-trade of the business.

Expenditure is more likely to be capital in nature if that expenditure results in either the strengthening of the existing core business structure or adds to that structure. The concept of "core business structure" could be seen as comprising the permanent (albeit not necessarily perpetual) structure of the taxpayer's business which is utilised for the generation of profits and is (to that extent) to be viewed as constituting the (permanent) assets of the business itself.

(b) The guidelines stated in para (a) above are to be applied to the specific facts of the case. In the High Court's view, the specific facts are obviously of the first importance. The facts — in and of themselves — have no normative force and therefore cannot be the justification (in and of themselves) for the decision arrived at by the Court. The categorisation of the expenditure as being capital or income nature cannot rest simply on the Court's appraisal of the facts. The underlying principle is that, for the expenditure to be of a capital nature, the first principle (*viz*, that the expenditure must have created a new asset or opened new fields of trading not hitherto available to the taxpayer) must be complied with.

Some examples of capital expenditure

Payments for buying off competition

Where the taxpayer pays a sum of money to buy off competition, the payment is considered one of a capital nature. In *Sun Newspapers Limited v The Federal Commissioner of Taxation* (1938) 61 CLR 337, expenditure incurred by a taxpayer to prevent publication of a competing newspaper was of a capital nature as it benefited the business entity, structure or organisation set up for the earning of profits. In *Walker v Joint Credit Card Co Ltd* (1982) STC 427, the taxpayer made a payment to a rival to effect a total closure of the rival's business; this left the taxpayer as an unchallenged member of a group running a particular business. The payment was held to be on capital account and non-deductible. Chapter

Licence fee for the right to build on land

A licence fee paid by the taxpayer for the right to build on land was characterised as a non-deductible capital expense in the Singapore Board of Review case of *MSI Pte Ltd v CIT* (1997) MSTC 5,221. The taxpayer had entered into an arrangement with the Jurong Town Corporation (JTC) to occupy land, subject to the condition that a warehouse be constructed on the land. The taxpayer paid a licence fee for the right to build on the land and a lease of the land took effect only after the warehouse was built. The Board of Review ruled that the fee was not "rental" but was part and parcel of the capital expenditure incurred while the building was taking place. According to the Board, although there were no manifest physical signs that the payment added to the capital structure, it was nonetheless fundamental to the whole transaction culminating in the long-term lease.

Payment for acquisition of right to use radio frequency spectrum for 3G mobile telecommunication services (3G spectrum rights) and 3G Facilities Based Operator (FBO) licence to provide 3G communication services

In the Singapore Board of Review case *Company X v CIT* (2013) MSTC ¶50-013, the payment of $100m for acquiring 3G spectrum rights and a 3G FBO licence to provide 3G communication services was held to be capital in nature and not deductible. Following the principles laid down by the High Court in *ABD Pte Ltd v CIT* (2010) MSTC ¶70-003; [2010] 3 SLR 609, the Board of Review ruled that the payment of $100m allowed the taxpayer to secure the following enduring advantages:

(a) confer the right to the 3G spectrum for 20 years

(b) install the 3G systems to provide 3G services

(c) acquire a means of avoiding or alleviating potential spectrum congestion

(d) acquire an opportunity to be a full-service telecommunications provider

(e) protect its existing customer base and enhance its customer base, and

(f) acquire an opportunity to provide a wider scope of services to its customer base.

These enduring advantages pointed clearly to the payment of $100m as being of a capital nature. The Board of Review also expressed the view that there is no requirement for a taxpayer to have acquired an asset in a proprietary sense before a payment can be considered to be capital in nature. An advantage of an enduring nature would suffice. On appeal, the High Court upheld the Board's decision that the payment of $100m was capital in nature (*BFH v CIT* (2013) MSTC ¶70-024; [2013] SGHC 169).

Bond discount and redemption premium

In the Singapore Board of Review case *FEOL v CIT* (2013) MSTC ¶50-011, the taxpayer had issued bonds in 1995 and the proceeds were used to finance the renovation works of a hotel, to refinance existing borrowings and as working capital in respect of the day-to-day operations of the taxpayer's business. The taxpayer also issued bonds in 1996 and the proceeds were used as working capital. The Comptroller allowed the deduction of interest paid on both bonds but disallowed the taxpayer's claim for deduction of discounts and redemption premium. The taxpayer's appeals to the Board of Review were dismissed. The Board of Review held that the discount was a deduction on the face value of the bonds given by the taxpayer as a bond issuer in 1995 and 1996. The taxpayer received proceeds of the bonds less the discount. Since there was no payment by the taxpayer, the discount was therefore not outgoings and expenses incurred by the taxpayer and was not deductible under s 14(1). The redemption premium was a one-time payment on the redemption of the 1995 bonds and since there was no evidence to the contrary, the one-time redemption premium was likely to be a capital expenditure and thus not outgoings and expenses wholly and exclusively incurred in the production of the income.

On appeal against the decision of the Board, the High Court (*BFC v CIT* (2013) MSTC ¶70-024; [2013] SGHC 169) addressed the following issues:

(a) On the issue of whether the discounts and redemption premium were "interest" under s 14(1)(a), the High Court ruled that to be "interest", a payment must be

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consideration paid by the borrower for the use of the lender's money which bears the fundamental feature of accrual with time. The High Court concluded that the discounts and redemption premium incurred by the taxpayer in respect of the bonds issued in 1995 and 1996 do not constitute "interest" under s 14(1)(a).

(b) On the issue of whether the discounts and redemption premium were outgoings and expenses wholly and exclusively incurred in the production of the taxpayer's income under s 14(1), the High Court ruled that the taxpayer had incurred actual outgoings with regard to the discounts in YA 2001 and YA 2002 by redeeming the bonds at their full face value. The redemption premium paid to the bondholders in YA 2001 was also an actual outgoing incurred by the taxpayer. Thus, the discounts and redemption premium constituted "outgoings and expenses" under s 14(1). Whether the expenses were wholly and exclusively incurred in the production of the taxpayer's income, case law indicated that there must be a nexus between the incurring of the discounts and redemption premium and the production of the taxpayer's income. The prohibition of the deduction of capital (as opposed to revenue) expenses under s 15(1)(c) would serve to reinforce the requirement under s 14(1) that the expenses must be wholly and exclusively incurred in the production of the taxpayer's income to qualify for deduction under s 14(1).

(c) On the issue of whether the discounts and redemption premium were capital expenses and therefore prohibited from deduction under s 15(1)(c), the High Court ruled that in determining the deductibility of interest expenses under s 14(1)(a), the nature of the underlying loan must be examined to determine whether interest expenses were in the nature of capital or revenue. In determining the nature of the underlying loan, and consequently the nature of the borrowing costs incurred on that loan, case law looked to the reason(s) for taking the loan and whether there was a sufficient linkage or relationship between the loan and the main transaction or project for which the loan was taken. If there was no or an insufficient linkage, the purpose of the loan must, *ex hypothesi*, be merely to add to the capital structure of the taxpayer and is therefore capital in nature. If a sufficient linkage was established, it must then be ascertained whether the main transaction was capital or revenue in nature. If it was capital in nature, then, given the linkage to the loan, the loan would also be capital in nature. If, on the other hand, the main transaction was revenue in nature, then again, given the linkage to the loan, the loan would also be revenue in nature. The High Court was satisfied that the bonds issued by the taxpayer in 1995 and 1996 were issued to finance renovation works of the hotel, existing borrowings as well as the day-to-day operations of the taxpayer's business. Sufficient linkage was established between the bonds issued in 1995 and 1996 and each of these purposes.

However, on the issue of whether the three purposes for which the bond proceeds in 1995 and 1996 were put to use were capital or revenue in nature:

(i) The High Court agreed with the Comptroller that the expenditure incurred by the taxpayer in respect of the hotel refurbishment work was capital in nature.

(ii) If a later loan is taken out to refinance an earlier loan, the nature of the earlier loan, ie whether capital or revenue in nature, must first be determined. If the earlier loan was revenue in nature, it would follow that the later loan and the borrowing expenses incurred in connection therewith would also be revenue in nature. If, on the other hand, the earlier loan was capital in nature, one should ask whether the taxpayer was ordinarily engaged in the business of financial operations. If the taxpayer was not, then borrowing expenses incurred on the later loan would likely be capital expenses and disallowed as a deduction under s 15(1)(c). In this case, the taxpayer failed to adduce evidence revealing the nature of the loans to be refinanced by the bonds issued in 1995 and 1996 and the taxpayer was not engaged in the business of financial operations. It would follow that the refinancing transactions for which the bonds were issued in 1995 and 1996 would have been capital as opposed to revenue in nature. To this extent, the bonds issued in 1995 and 1996 were capital in nature and the borrowing expenses incurred in connection therewith would also be capital in nature.

(iii) The High Court held that since the bonds issued in 1995 and 1996 were not linked to any specific project or transaction that was clearly revenue in nature, the bonds issued in 1995 and 1996 were capital in nature.

Accordingly, the discounts and redemption premium incurred by the taxpayer in respect of the bonds issued in 1995 and 1996 were capital in nature and therefore, disallowed from deduction under section 15(1)(c) of the Act.

On appeal against the decision of the High Court by the taxpayer, the Court of Appeal (*BFC v CIT* (2014) MSTC ¶70-033; [2014] SGCA 39) upheld the decision of the High Court that the discounts and redemption premium were capital in nature and therefore not deductible. The Court of Appeal also clarified the relationship between s 14(1)(a) and s 15(1)(c) and the meaning of the term, "interest", for the purposes of s 14(1)(a). See also ¶6-210.

Special levy collected by management corporation to finance loan taken to undertake a project of retrofitting and upgrading works to common property

In *BLP v CIT* [2013] SGITBR 2, the Board of Review held that a special levy collected by a management corporation from subsidiary proprietors to finance a loan of $11,600,000 was revenue in nature and ruled in favour of the Comptroller, which meant that the special levy should be included in the formula to determine if the management corporation was carrying on a trade under s 11(1) of the Act.

On appeal against the decision of the Board of Review, the High Court in *BLP v CIT* (2014) MSTC ¶70-031; [2014] SGHC 127, examined the nature of the work to be done to the common property as a whole, concluding that the project undertaken by the management corporation was a major one-time overhaul intended to strengthen the property and even created new assets. The High Court was of the view that the purpose of the transaction must be looked at. If the transaction created a new asset or enhanced an existing asset, the transaction would likely be capital in nature. The High Court was also of the view that the special levy, the loan and the project of retrofitting and upgrading works to the common property of the complex were all closely linked. As the special levy was used to finance the loan taken for such

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retrofitting and upgrading work to be done to the common property, the High Court held that the special levy was inextricably linked to the project and thus, should be capital in nature and not income. Accordingly, the special levy should not be included in the formula when determining whether the management corporation was carrying on a trade under s 11(1) of the Act.

¶7-230 Section 15(1)(e) to (q)

Section 15(1)(e) to 15(1)(q) prohibits a deduction for the expenditure listed below:

- Recoverable expenses, which would otherwise rank for deduction, under any contract of insurance or indemnity (s 15(1)(e)). As there is usually a time lag between loss suffered and amount recovered, the Comptroller has in practice exercised some discretion as illustrated in Example 1.

Example 1

Careless Lee Pte Ltd's raw materials were destroyed by a fire in 2014. The loss was quantified at $500,000 and accounted for in the profit and loss account for the year ended 31 December 2014. Insurance compensation of $400,000 was received in June 2015 and accounted for in the 2015 profit and loss account. The Comptroller may treat the matter in two ways:

(a) In YA 2015, he may allow a deduction of $100,000 for the net loss suffered in 2014. The compensation received in 2015 will not be taxed in YA 2016.

(b) In YA 2015, he may allow a deduction for the loss of $500,000. In YA 2016, he will treat the compensation received in 2015 as taxable income.

Whichever method the Comptroller uses, the net loss of $100,000 qualifies for a deduction. In the case of fixed assets qualifying for capital allowances (CAs), the amount recovered is to be taken into account in calculating the balancing allowance or balancing charge (see Chapter 8 at ¶8-100ff).

- Rent or the cost of repairs to any premises or part of premises not paid or incurred for the purpose of producing income (s 15(1)(f)).
- All taxes levied on income. This includes income tax paid in Singapore or outside Singapore (s 15(1)(g)).
- Any amount of goods and services tax (GST) payable by a taxpayer who is required to register under the *Goods and Services Tax Act (Cap 117A, 2005 Ed)* (the "GST Act") but has failed to do so, or who is entitled to credit the amount of tax payable as an input tax (s 15(1)(h)).
- Any amount of output tax paid or payable under the GST Act which is borne by a person registered as a taxable person under that Act (s 15(1)(m)).
- Payments made to any provident fund, savings, widows' and orphans' or other society or fund, including the Supplementary Retirement Scheme (SRS), except obligatory payments to the Central Provident Fund (CPF) accounts of employees, payments to employees' retirement accounts or special accounts in accordance with the *Central Provident Fund Act (Cap 36, 2013 Revised Ed)*; qualifying payments to employees' SRS accounts and such payments as allowed under s 14(1)(e) and 14(1)(f) (s 15(1)(i)).

- Interest and other related payments in connection with indebtedness referred to in s 12(6) paid by any person out of Singapore to another person out of Singapore except where tax has been deducted and accounted for under s 45 (s 15(1)(j)).
- Any outgoings and expenses, whether directly or in the form of reimbursements, and any claim for the cost of renewal incurred on or after 1 April 1998 in respect of a motor car (ie a car constructed or adapted for the carriage of not more than seven passengers exclusive of the driver and the weight of which unladen does not exceed 3,000 kg) except:
  - a taxi
  - a motor car registered outside Singapore and used exclusively outside Singapore
  - rental cars of hiring companies
  - a motor car which was registered before 1 April 1998 as a business service passenger vehicle (see ¶7-520), and
  - a motor car registered on or after 1 April 1998 which is used principally for instructional purposes if the person is carrying on the business of providing driving instruction and holds a driving school licence or driving instructor's licence issued under the *Road Traffic Act (Cap 276, 2004 Revised Ed)* (s 15(1)(k)).
- Any outgoings and expenses incurred in respect of a designated unit trust (per s 35(14)) by a person who is a unitholder of the trust (s 15(1)(l)).
- Any outgoings and expenses incurred in respect of any approved CPF unit trust as defined in s 35(14) if the person is a unitholder who uses monies other than those standing to his credit in the CPF to purchase units in such trust (s 15(1)(n)).
- Any fee paid to a lender under a securities lending arrangement by a Singapore borrower when the borrower fails to notify the Comptroller that he derived Singapore dividend income on securities borrowed under the lending arrangement (s 15(1)(o)). Under such an arrangement, a holder of securities agrees to lend securities to a borrower for a period in return for a fee. At the end of the period, the borrower returns replacement securities equivalent in number and type to the lender.
- Any outgoings and expenses, whether directly or in the form of reimbursements, incurred in respect of any right or benefit granted to any person to acquire shares on or after 1 January 2002 in any company if the right or benefit is not granted by reason of any office or employment held in Singapore by the person (s 15(1)(p)).
- Any outgoings and expenses, whether directly or in the form of reimbursements, incurred by any company in respect of any right or benefit granted to any person, by reason of any office or employment held in Singapore by that person, to acquire shares (other than treasury shares) of a holding company of that company (s 15(1)(q)). This means that a subsidiary company would not be able to claim a deduction for any recharges in respect of stock option expenses from its holding company.

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GENERAL DEDUCTION FORMULA

¶7-300 General deduction formula

Section 14(1) sets out the general deduction formula, which reads:

> "For the purpose of ascertaining the income of any person for any period from any source chargeable with tax under this Act (referred to in this Part as the income), there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period by that person in the production of the income, including . . ."

The applications of this general deduction formula are discussed below under the following requirements.

¶7-310 "Any person . . . from any source"

The formula is to be applied when determining the income of "any person . . . from any source". Its application is therefore not restricted to any particular class of taxpayers or to any particular source of income. The formula requires a source-by-source concept to be applied — expenses incurred in the production of each source of income must be matched strictly against that source. In other words, expenses are not deductible on an aggregated basis to be deducted against the total of all sources of income. Example 2 illustrates:

Example 2

	$	$	$
Adjusted trade income (s 10(1)(a))			**28,900**
Interest income from subsidiary (s 10(1)(d))		6,700	
Less: Loan interest expense		(4,300)	2,400
Rental (s 10(1)(f))		22,000	
Less: Property tax	(18,000)		
Repairs and maintenance	(3,500)		
Loan interest expense	(4,600)		
Insurance expenses	(1,900)	(28,000)	NIL*
Statutory income			31,300

(* The excess amount of rental expense of $6,000 cannot be used as a deduction against other sources of income (eg s 10(1)(a) trade source) and is disregarded as the rental income in Example 2 is a s 10(1)(f) source of income.)

¶7-320 Income chargeable with tax

All outgoings and expenses claimed must be related to a source of income that is chargeable to tax under the Act. If an income is not chargeable to tax, eg exempt income, no related expenses can be deducted.

Liberalised tax treatment for repatriated foreign income

Where expenses are incurred in the production of foreign income that is not repatriated to Singapore, they are not deductible because there is no income chargeable with tax. A strict interpretation of s 14(1) requires a matching of the expenditure incurred with the receipt of foreign income in Singapore. Expenses incurred in the production of income that is not repatriated to Singapore within the same year are therefore not allowed to be carried forward to set off against the foreign income repatriated in subsequent years.

A person deriving foreign income may, in certain cases, have genuine reasons for not repatriating his foreign income to Singapore. As a concession, with effect from YA 1996, allowable expenses incurred in Singapore to produce foreign income that is not repatriated to Singapore in the same year, may be carried forward and deducted against the foreign income when it is repatriated in subsequent years.

The following conditions apply:

- in the case of allowable expenses incurred to produce foreign investment income (eg foreign dividends), only allowable expenses incurred on income-producing investments may be carried forward for set-off (an investment is regarded as "income-producing" from the date it commences to produce income if it continues to be held for the purposes of earning income), and
- to qualify to be carried forward for set-off, the expenses must not have already been claimed as a deduction in the foreign tax jurisdiction (the Inland Revenue Authority of Singapore (IRAS) may require an external auditor's certificate to this effect before allowing a deduction).

(See IRAS e-Tax Guide "Liberalised Treatment of Expenses Incurred in Singapore to Derive Foreign Income", published on 10 October 2014.)

The IRAS provides the following two methods for computing the amount of expenses that can be deducted against foreign income repatriated in any year:

- *Direct method* — This method requires detailed accounting of the expenses and the corresponding income for each year. In any year that foreign income is repatriated to Singapore, the actual expenses that were incurred to earn the foreign income will be allowed as a deduction.
- *Indirect method* — Under this method, the allowable expenses and the non-repatriated foreign income are aggregated. In any year that foreign income is repatriated to Singapore, the allowable expenses are computed by the formula:

$$\frac{A}{B} \times C$$

where:

A = the amount of foreign income repatriated to Singapore in the year

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B	=	the aggregate of the foreign income derived during the liberalised tax treatment period up to and including the year concerned which has yet to be repatriated to Singapore plus "A"
C	=	the aggregate of the allowable expenses incurred to produce foreign income during the liberalised tax treatment period up to and including the year concerned which have yet to be allowed as a deduction against foreign income repatriated.

Further administrative details and specific applications relating to the election and revocation of this liberalised tax treatment can be found in the IRAS e-Tax Guide "Liberalised Treatment of Expenses Incurred in Singapore to Derive Foreign Income", published on 10 October 2014.

¶7-330 Wholly and exclusively

"Wholly" refers to the quantum of the expenditure (ie the sum of money spent) and "exclusively" has reference to the motive or object behind the expenditure (*Romer* J, in *Bentleys, Stokes and Lowless v Beeson* (1952) 2 All ER 82 at 85).

More than one motive

Generally, where the expenditure is incurred for the sole objective of income production and some other objectives inherent in the business activity necessarily result or are also attained, the expenditure will not be disqualified. Difficulty arises, however, when an activity is undertaken with more than one motive. For example, an activity could be undertaken with the object of both promoting business and some other purpose (eg indulging in an independent wish to entertain a friend or stranger, supporting a charitable or benevolent object, etc). Although the taxpayer may think that the business motive predominates, the expenditure still fails the "wholly and exclusively" test. Thus, the taxpayer's intention for incurring the expenditure is an important consideration.

Subconscious personal motive

It is generally accepted that where a taxpayer's intention behind an expense is to procure a purely business benefit but an incidental benefit of a personal nature arises, a deduction is allowed. However, where both benefits are present in the taxpayer's mind when he incurs the expense, deduction is not allowed.

The case *Mallalieu v Drummond (Inspector of Taxes)* [1983] STC 665, however, cuts across this accepted tax concept. In that case, a practising lawyer incurred expenditure on the cost of clothes for court wear in accordance with the Bar Council's relevant guidelines. She claimed a deduction for the clothes and other related expenses that included laundering and cleaning expenses. The House of Lords held that while the taxpayer might well only have had the professional purpose in her conscious mind, another object, though not a conscious motive, was the provision of the clothes that she needed as a human being. The expenses were therefore not deductible. The decision would appear to suggest that if there is a conscious business motive and a subconscious personal motive, the whole of the expenditure will not rank for deduction.

The Singapore context

In Singapore, the words "wholly and exclusively" have been interpreted stringently.

Air travel

In *Re D & Ors* (1969) 2 MLJ xvi, it was held that the cost of air travel incurred by the taxpayers had not been wholly and exclusively incurred in Singapore as they had been on a Far East tour.

Notebook computer and briefcase

In *TGLR v CIT* (Appeal No 7, 8, 9 & 10 of 1996), the taxpayer was a lawyer who was an employee of a law firm. The Singapore Board of Review found that her purchase of a notebook computer and a briefcase were not expenses that had been incurred wholly and exclusively in the production of her income. Instead, the Board found that the items she had purchased could have been and were capable of other uses not connected to the production of income.

Payment to financier under recourse agreement

In *UDPL v CIT* (2005) MSTC 5,331 (ITBR Appeal No 14 of 2000), the Singapore Board of Review held that a payment of $475,400 made by the taxpayer to a financier under a recourse agreement was not deductible as there was a duality of purpose.

In the above case, the taxpayer was a Singapore-incorporated company and a subsidiary of a public listed company. The taxpayer was incorporated for the purpose of developing a condominium project for sale. It entered into a recourse agreement with a financier, a related company, where the financier would lend an amount in excess of a basic loan of 70% of the purchase price of the unit to a purchaser of a unit in the condominium. The taxpayer also undertook to guarantee repayment to the financier of this excess amount. A purchaser who bought nine units in the condominium development defaulted and the taxpayer paid $475,400 to the financier in accordance with the agreement.

The Board found that the payment served two purposes: one was to attract buyers to take loans from the financier (which the taxpayer preferred) for that property development, and another was to attract sales by helping the buyer to obtain more finance. The Board also found that the giving of such guarantees were not an essential part of a housing developer's normal business and the guarantee expenses were not ordinary or usual working expenses that would be normally incurred in a developer's production of income. Accordingly, the expenditure was not deductible, not being wholly and exclusively incurred in the production of the taxpayer's income.

Security guard services

This principle of "wholly and exclusively" is further endorsed in the High Court case of *NE v CIT* (2006) SGHC 199. In this case, the taxpayer sought to deduct the costs of employing a security guard to protect its director. The case first went before the Singapore Board of Review (*NE v CIT* (2006) MSTC 5,566) which relied on the case of *Mallalieu v Drummond (Inspector of Taxes)* [1983] STC 665 in arriving at its judgment that the expenditure will not qualify for deduction if the object of the expenditure was to serve another private purpose in addition to the business purpose for which it was purportedly incurred. The Board concluded that there was a dearth of

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evidence to support the taxpayer's business purpose of employing the bodyguard. It was of the view that the expenditure clearly entailed a private purpose, as the inevitable and inextricable consequence was the protection of the physical integrity and well being of the director. The High Court judge also concluded that there was insufficient evidence to establish the purpose of the employment of the bodyguard. The Court upheld the Board's decision and dismissed the appeal.

Apportionment

In principle, dual-purpose expenditure would fail the "wholly and exclusively" test. However, the Comptroller may apply the following rules of apportionment:

- where a taxpayer incurs dual-purpose expenditure and the amount is divisible, an amount of the expenditure that is apportioned on a reasonable basis is allowed. Examples of these expenses include entertainment and travelling expenses incurred by a sole proprietor, and the costs of airfares incurred by an artiste who performed in Singapore as part of a regional tour, and
- where a taxpayer derives income from different sources taxable under s 10(1) or from both taxable and non-taxable sources (eg exempt pioneer income), common expenses are apportioned among the relevant sources on a fair and agreed basis.

Reasonableness or magnitude of expenditure

The Comptroller can probe into the reasonableness or magnitude of an expenditure only for purposes of determining whether, in fact, the amount is spent. A taxpayer is entitled to conduct his business as he thinks fit. If a transaction is at arm's length, the Comptroller cannot disallow any part of the expenditure on the basis that the taxpayer could have incurred a smaller amount.

¶7-340 Incurred during that period

Regarding the meaning of the word "incurred", the following dictum in *New Zealand Flax Investments Ltd v FCT* (1938) 61 CLR 179 is helpful:

> ". . . 'incurred' does not mean only defrayed, discharged or borne, but rather it includes encountered, run into or fallen upon. It is insufficient to attempt excessive definitions of a conception intended to have such a various or multifarious application but it does not include a loss or expenditure which is no more than impending, threatened or expected."

The word "incurred" was also examined by the Privy Council in *CIR (Hong Kong) v Lo & Lo* (1984) WLR 986:

> "an expense incurred is not confined to a disbursement, and must at least include a sum in which there is an obligation to pay, that is to say an accrued liability which is undischarged."

The accrual basis of accounting also requires companies to accrue for expenditure in which the legal liability to pay arises or crystallises in the subsequent accounting period. Examples include provisions for leave passages, leave pay, retiring benefits, etc. However, for tax purposes, provisions for such expenditure are not deductible.

Commencement/Cessation of business

Expenses incurred before the commencement of business, or after the termination of the business, would not satisfy the general deduction formula. The reason is that these expenses are incurred before or after (and not in) the production of the income respectively.

A concession has been granted from YA 2004 to allow the deduction of all expenses of a revenue nature and not prohibited under s 15 (so-called "revenue expenses") that are incurred from the first day of the accounting year in which a business derives its first dollar of trading receipt. The concession, however, does not prevent a business from claiming a deduction for revenue expenses even earlier if it can prove that it has started trading before that year. The concession does not extend to companies to which s 10E applies (ie investment holding companies). This concession addresses, to some extent, the difficulty of determining when a source of business or trading income could be said to have commenced.

The IRAS has issued some guiding principles and examples on how to determine the commencement date of a business in its e-Tax Guide "Determination of the Date of Commencement of Business", published on 29 July 2014. The primary considerations are to ascertain the actual regular activities carried on by a business and the presence of the profit-making structure of the business that enables it to commence its day-to-day operations.

From YA 2012, businesses can claim a deduction for pre-commencement revenue expenses incurred in the accounting year immediately preceding the accounting year in which they earn the first dollar of trade receipts. This enhanced concession, legislated under s 14U of the Act, will provide certainty for businesses as well as ease compliance requirements. All other existing conditions of the current concession will continue to apply.

(See IRAS e-Tax Guide "Concession for Enterprise Development — Deduction of Certain Expenses Incurred Before Business Revenue is Earned (2nd Ed)", published on 3 September 2014.)

Example 3

Assume Company ABC was incorporated on 1 June 2013 and has an accounting year-end of 31 December. It prepared its first financial accounts for the accounting period ended 31 December 2013. Assume further that Company ABC earns its first dollar of trade revenue on 15 May 2014. For YA 2015, Company ABC can claim a deduction for all revenue expenses incurred during the pre-commencement periods, ie from 1 June 2013 to 31 December 2013 and from 1 January 2014 to 14 May 2014 under the enhanced concession. Under the YA 2004 concession, Company ABC could claim only the expenses incurred from 1 January 2014 to 31 December 2014 in YA 2015.

¶7-350 In the production of the income

Section 14 states that the expenses must be incurred "in the production of the income". This wording clearly requires a sufficiently close nexus between the expenditure incurred and the income producing activity, whether or not any income is produced, for a deduction to be available.

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Nexus between expense incurred and income produced

It is necessary to evaluate the closeness or remoteness of an expenditure to the income-earning operations. The Malaysian Board of Review has held that the words "in the production of income" are not the same as "in order to produce income". (Note that s 33 of the Malaysian *Income Tax Act 1967* is worded as "in the production of gross income".) In one case, expenses incurred by a Supreme Court judge on his judicial robe acquired when he was appointed a judge were not deductible (*Re AB* (1960) FB XXIII).

The Singapore Court of Appeal case *Pinetree Resort Pte Ltd v CIT* [2000] 4 SLR 1 upheld the "wider nexus" test when it held that "the business has to be looked at as a whole set of operations directed toward producing income, in which case an expenditure which is not capital is usually considered as having been incurred in gaining or producing income". This wider nexus test was also applied in the *IA* case (see ¶7-220) where the requirement under s 14(1) for a nexus between the incurrence of expenses and the production of income was reiterated.

Another Singapore case *KD v CIT* (2006) MSTC 5,539; [2005] SGITBR 3 also adopted a broader view of deduction under s 14(1), ie the wider nexus test, specifically with respect to the meaning of the term "in the production of the income" in s 14(1).

In that case, the taxpayer was a company incorporated in Singapore in 1984 and its business included the business of developing, manufacturing and selling in-vitro diagnostic tests for the detection of human infectious diseases. The products manufactured and sold by the taxpayer included certain diagnostic kits using a laboratory technique to detect HIV-2 (or both HIV-1 and HIV-2).

The taxpayer was engaged in legal proceedings to determine whether B, a non-profit private foundation registered in France, had a valid patent for the HIV-2 retrovirus capable of inducing the Acquired Immune Deficiency Syndrome (AIDS) and the antigenic and nucleic acid components thereof. B had granted an exclusive licence in respect of the above patent to C, a company incorporated in France.

On or about 8 September 2001, the taxpayer settled the matter by paying $5,220,900 (or US$3m) pursuant to a settlement agreement made with B and D (formerly known as C). The taxpayer also incurred total legal expenses of $1,547,257 over YA 1999 to YA 2002. The settlement sum of US$3m was calculated, using a rate of US$2.20 for every HIV test sold by the taxpayer for the period 6 October 1992 to 3 February 2000 (the period of infringement), to work out the compensation payable to B and C. The rate of US$2.20 for every HIV test was what an unrelated party would pay as royalties to the licensor for the grant of a limited non-exclusive sub-licence at the time of making the settlement agreement. The taxpayer appealed to the Board of Review against the Comptroller's disallowance of the settlement sum and the legal expenses.

Taking a broader view of deduction, the Board said that, in determining whether an expenditure was incurred in the production of income, it is necessary to look at the business as a whole set of operations directed towards producing income. No expenditure, strictly speaking, in itself actually gains or produces income. It is an outgoing, not an incoming. Its character can be determined only in relation to the object which the person making the expenditure has in view. If the actual object is the conduct of the business on a profitable basis, then the expenditure is an

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expenditure incurred in producing the income. The Board held that, for an expenditure to be incurred in the production of income, it is both sufficient and necessary that the occasion of the expense should be found in whatever is productive of the income.

Applying this principle to the facts, the Board accepted the taxpayer's view that the settlement sum was incurred to deal with the liability arising out of the taxpayer's business activities, namely the manufacture and sale of the HIV test kits without a licence for the relevant period. Such activities were carried out with the objective of producing income. The legal expenses were also incurred for the purposes of the taxpayer's business activities, namely the manufacture and sale of the HIV test kits which were carried out with the objective of producing income.

Includes all closely connected expenses

In *Port Elizabeth Electric Tramway Company Ltd v CIR* 8 SATC 13, the taxpayer was a transport company and one of its drivers was killed in an accident. The taxpayer was required to pay compensation to the deceased's representatives and it incurred legal costs to contest the claim. The issue was whether the compensation and legal expenses were deductible. *Watermeyer* AJP applied the following principle:

> "The purpose of the act entailing expenditure must be looked at. If it is performed for the purpose of earning income, then the expenditure attendant upon it is deductible . . . The other question is, what attendant expenses can be deducted? How closely must they be linked to the business operations? Here, in my opinion, all expenses attached to the performance of a business operation *bona fide* performed for the purpose of earning income are deductible whether such expenses are necessary for its performance or attached to it by chance or are *bona fide* incurred for the more efficient performance of such operation provided they are so closely connected with it that they may be regarded as part of the cost of performing it."

The Court held that the need to make compensation to the deceased's representatives arose from the employment of drivers to run the company's vehicles for the purpose of earning income. The compensation payment was therefore closely linked to the income-earning operations and qualified for deduction. On the other hand, the legal expenses were not closely linked and were therefore not deductible.

May relate to future income

It is generally accepted that the words "in the production of the income" do not mean that before any expenditure can be deducted, it must have produced income in the year in which it was incurred; the expense would be deductible if the source of income to which it relates has already commenced. In the *Vallambrosa* case (see ¶7-220), the expenses claimed included maintenance, weeding and pest control expenses that were incurred on the entire rubber estate. Only 1/7 of the rubber trees in the estate at the relevant time were rubber-producing (rubber trees take about six years before they

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reach maturity and begin to produce rubber). The Revenue therefore disallowed 6/7 of the expenses as this amount was not referable to the profit earned within the year. The Court, however, held that the expenses were fully deductible. Lord *Johnson* said:

> "It appears to me that, . . . , the trade . . . of the company is the cultivation and production for sale at profit of rubber and other tropical products. For this purpose, land had to be acquired, cleared, and drained, roads made, and buildings erected, before the cultivation began. What was expended for these purposes was I think capital expenditure. But once the cultivation began with the planting, expenditure on cultivation, production and marketing was I think revenue expenditure for the purpose of the trade."

DEDUCTIONS SPECIFICALLY ALLOWED

¶7-410 Interest

For interest expense to be deductible under the specific requirement of s 14(1)(a), it must be payable on capital employed in acquiring the income.

In *BFC v CIT* (2014) MSTC ¶70-033; [2014] SGCA 39, the Court of Appeal affirmed s 14(1)(a) as an exception to s 15(1)(c). The exception created by s 14(1)(a) is that any sum payable by way of interest is deductible and not prohibited by s 15(1)(c) if the Comptroller of Income Tax is satisfied that such interest was payable on capital employed in acquiring the income. In *BFC v CIT*, the Court Of Appeal clarified that interest payable on a loan taken for the purpose of purchasing or developing a capital asset, being capital in nature, would not be deductible because s 15(1)(c) would apply to prohibit a deduction. However, when the capital asset is employed in acquiring income, although the interest remains a capital expenditure, a deduction may be allowed under s 14(1)(a). The nature of the interest payable on a loan taken for the purpose of purchasing or developing a capital does not change when the capital asset is employed in acquiring income. See ¶7-220 for a discussion on the nature of interest expense.

Some principles on the deductibility of interest expense are summarised below.

Application of principal amount

The purpose to which the principal amount of the loan has been applied will determine whether or not the interest is deductible. If the money borrowed is used for the purchase of business assets, in meeting outgoings incurred in carrying on the business or for the purchase of property from which income is derived, the interest expense is deductible (*FC of T v Munro* (1926) 28 CLR 153).

Interest incurred before commencement of business

Expenses incurred before the commencement of a business are not incurred in the production of the income.

Where a company acquires land for the purpose of constructing a building and carrying on a property letting business, the company will have started business only on the date the temporary occupation permit (TOP) is issued or a tenancy contract is entered into. Any interest expenses incurred during the construction of the building will not be deductible.

In *TML v CIT* (2005) MSTC 5,359 (Appeal No 20 of 2000), the taxpayer was a property investment company. The taxpayer claimed deduction for interest expenses (as well as other expenses such as property tax and administrative, marketing and advertising expenses) incurred from 28 October 1993 to 15 November 1995, which was the date the property was granted the TOP. The taxpayer then secured the first tenant. The issue was whether these expenses could be set off (as losses brought forward from the construction period) against the taxpayer's rental income for YA 1997.

The Board applied the test in *Mitsui-Soko International Pte Ltd v CIT* (1998) MSTC 7,349 and held that where a taxpayer acquires or constructs a building for the business of letting out the premises to earn rent, its business would commence when a profit making structure is established. The structure is established when it is ready or capable to earn income and ordinary current business operations have begun. On the facts, the taxpayer's capability to earn rental income from the letting out of the building would arise only when the building is ready and the TOP has been issued. Before the TOP date, the premises would not be fit for occupation and so it could not be let out. The Board also held that, in any event, the interest expenses incurred before the TOP date were capital in nature.

The High Court dismissed the taxpayer's appeal on the basis that the taxpayer's business had not commenced before the TOP date: the pre-commencement losses could not, therefore, be carried forward for deduction. Based on a close examination of the wording of s 14(1)(a) and 15(1)(c), however, the High Court said that the s 15(1)(c) prohibition for capital expenditure did not apply to the interest expenses (see *T Ltd v CIT* (2007) MSTC 7,590; [2005] SGHC 115). The High Court's view that s 15(1)(c) did not apply to interest expenses was approved by the Court of Appeal in *JD Limited v CIT* (2006) MSTC 7,504; [2005] SGCA 52. However, in both Court of Appeal cases *T Ltd v CIT* (2007) MSTC 7,609; [2006] SGCA 13 and *CIT v IA* (2007) MSTC 7,549; [2006] SGCA 24, the Court disagreed and held that s 15(1)(c) can apply to interest expenses — see ¶7-220 for more details.

Link between money borrowed and income produced

In Singapore, for interest expenses to be deductible under s 14(1)(a), they must have been payable on capital employed in acquiring "*the* income", not just "*income*" or "*any* income" (*Andermatt Investments Pte Ltd v CIT* (1994) MSTC 7,261 and (1995) 2 MSTC 7,287).

In the *Andermatt* case, the sequence of events was as follows:

- On 28 November 1987, the taxpayer company was incorporated for the purpose of carrying on the business of investment holding. (The shareholders of the taxpayer company also owned the shares of Wan Holdings Pte Ltd (WHPL), the company that originally owned a property at Hillview.)
- On 8 December 1987, the taxpayer purchased all the issued shares of WHPL, paying $1m from its paid-up capital of $1m; the remaining $19m stood as a debt owing to the vendors.
- On 31 December 1987, the taxpayer passed the resolutions to initiate a winding up of WHPL by way of a members' winding up and to appoint liquidators.

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- On 5 January 1988, the taxpayer (as sole shareholder of WHPL) received dividend income of $4,620,007 from WHPL.
- On 8 February 1988, the taxpayer obtained an overdraft facility of $6m from OCBC.
- On 31 March 1988, the liquidators of WHPL distributed the Hillview property to the taxpayer as a return of capital *in specie*. Thereafter, the taxpayer as landlord commenced to receive rental income.
- On various dates in May and June 1988, the taxpayer drew down a total of $5.8m from the OCBC overdraft facility. This was used to pay off part of the existing debt to the vendors of the WHPL shares.
- During its accounting period 28 November 1987 to 31 December 1988, the taxpayer derived total rental income of about $600,000. Besides this rental and the dividend income received on 5 January 1988, the taxpayer did not have any other sources of income for the period. It incurred a total of interest expenses of $201,172 on the drawdown of $5.8m from the OCBC facility.
- The taxpayer claimed a deduction for the interest expenses under s 14(1)(a). The courts held that since the overdraft on which the interest was payable had not been used to acquire the property from which the taxpayer's rental income was derived, the interest was not deductible.
- The High Court stated that s 14(1)(a) provides that interest is deductible from income if it is payable on "capital employed in acquiring the income". The expression "the income" in s 14(1)(a) refers to the income from a specific source for a specific period and not the total income from all sources for that period: it refers to income from the source in relation to which the relevant capital has been employed. Interest on such capital can be deducted only from income from that source and not from any other income or from the total income.
- On appeal, the Court of Appeal upheld the High Court's decision. In order for the interest to be deductible, there must have been a direct link between the money borrowed and the income produced: the deduction could only be allowed if the overdraft had been employed in acquiring the taxpayer's income. Since the overdraft had been used to pay part of an existing debt rather than to acquire the taxpayer's property, the interest was not deductible.

Deductibility of interest on refinancing loans

Based on the 1994 decision in *Andermatt*, interest expenses incurred on refinancing loans would not be deductible under s 14(1)(a). This is because a refinancing loan is taken up to repay an existing loan and the interest incurred on the refinancing loan is, technically, not payable on capital employed to acquire the income. This strict interpretation may, however, not reflect commercial reality in certain cases.

As a concession, the IRAS may allow the deduction of interest payable on refinancing loans if the taxpayer can establish that the refinancing has been effected for genuine commercial reasons, for example:

(a) if the refinancing has been effected to achieve an overall reduction in finance costs, or

(b) if the refinancing was necessary due to the taxpayer's financial position (eg the taxpayer may be in financial difficulties and need to restructure the loan in the interim)

(See IRAS e-Tax Guide "Administration Concession for Interest Incurred by Taxpayers on Loans to Re-finance Earlier Loans or Borrowings", published on 17 April 1995.)

The onus is on the taxpayer to prove that a refinancing arrangement has been entered into for commercial reasons. The concession does not preclude the Comptroller from disallowing interest incurred:

(a) on a subsequent loan against income derived from an asset purchased with an original loan where the proceeds from the second loan are used to finance another asset (ie where the first asset is security for a loan to purchase the second asset), or

(b) in relation to non-income producing assets.

Note, however, that following the decision in the *IA* case in 2005, the refinancing expenses incurred in connection with a revenue purpose loan would have qualified for tax deduction.

Apportionment

Where interest is paid on borrowed money used partly for business and partly for non-business purposes, the Comptroller disallows the proportion of interest applicable to the latter. The Comptroller usually applies either of the following methods of apportionment to calculate the *non-deductible* amount:

(a) $$\frac{\text{Amount due from non-trade debtors} \times \text{Interest expense}}{\text{Cost of fixed assets} + \text{Current assets} - \text{Cash and bank balance}}$$

(b) $$\frac{\text{Non-income producing assets} \times \text{Interest expenses}}{\text{Total assets at cost}}$$

In *HHCL v CIT* (2005) MSTC 5,391 (Appeal No 12 to 23 of 1999), an issue before the Singapore Board of Review was whether interest expenses were deductible against dividend income derived by the taxpayer.

In the above case, the taxpayer's principal activity for YA 1985 to YA 1996 (the YAs in dispute) consisted of investing in shares, with substantial long-term investments in various subsidiaries and associated companies.

Both the taxpayer and the Comptroller had agreed on the use of the total assets method as a method of apportioning the interest expenses to be deducted. In relation to the expression in s 14(1), "source chargeable with tax under the Act", however, the taxpayer argued that all its share investment counters formed one source of income. The Comptroller, on the other hand, took the view that each share investment constituted a separate source of income.

The Board found that the word "source" in s 14(1) means a channel or stream of income and the dividends of each of the distinct share counters could constitute a distinct source of income for the purpose of deductibility. The Board cited with approval the Indian High Court case *Seth Shiv Prasad v Commissioner of Income Tax, UP* [1972] 84 ITR 15. In the latter case, the Indian High Court said that it is the shareholding held by the taxpayer that constitutes the source of dividend income, and

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that there can be as many sources of income as there are shareholdings. Shareholdings in different companies constitute different sources of income. The shares of one company may be treated by the taxpayer as a single shareholding. The taxpayer may also, for good reason, treat the shares of the same company as constituting a number of separate and distinct shareholdings. The shares may be divided into groups defined by reference to the circumstances in which they were acquired, or to the purpose for which they were purchased (see also ¶7-310 and Chapter 10 at ¶10-100ff). The Board said that the concept of "source" as a channel or stream of income is consistent with the principle that s 14(1)(a) requires a direct nexus between expenses incurred and the source of income produced. Hence, only the interest expense incurred in producing the income from a separate counter of shares can be deducted against the dividend income generated for that respective shareholding.

The Board also said that the total assets method that the CIT adopted was legally tenable and reasonable and had been properly applied.

The taxpayer's appeals to the High Court and thereafter to the Court of Appeal were dismissed. The Court of Appeal agreed with the High Court that the heads of income enumerated under s 10(1) of the Act are simply descriptions of the types of income that s 10(1) enacts as being chargeable to tax, one of which is dividend income. The key is to look at the taxpayer's activities and/or property as the originating cause of income or the means by which the different types of gains or rewards enumerated and classified as "income" are derived.

The Court of Appeal approved of the principle in *Seth Shiv Prasad* (see above), and also rejected the taxpayer's submission that interest expenses are not deductible only in situations where the expenses are incurred in the gaining of tax-exempt income or where the investment or capital itself has been extinguished. The Court held that where the taxpayer has borrowed funds, paid interest on these funds, and invested these funds, these investments must produce income for the interest expense to be deductible. Where the investment does not produce income, the interest expense on those investments is not deductible. The Court found that the Comptroller's adoption of the interest adjustment formula showed him to be mindful of the practical tax consequences faced by taxpayers and that he had not abused the administrative discretion conferred upon him by s 14(1)(a). See *JD Limited v CIT* (2006) MSTC 7,504; [2005] SGCA 52.

Interest paid to a non-resident lender

Where a Singapore borrower is liable to pay interest to a non-resident lender, and such interest is deductible as an expense in Singapore, the borrower is obliged to withhold tax at the applicable tax rate or at a lower rate where indicated by the Comptroller (s 45(1)).

Interest paid by a person outside Singapore to another person outside Singapore is not deductible unless withholding tax has been deducted from that interest under s 45 (s 15(1)(j)) (see Chapter 14 at ¶14-100ff for details on withholding tax).

Examples of deductible and non-deductible interest expense

Examples of deductible interest expense include interest incurred on:

- money borrowed to purchase shares that provide dividend income (note that interest deduction is limited to the amount of income from the investment if the source of income is not a s 10(1)(a) source)
- loans acquired to purchase revenue and fixed assets used in an existing business, including assets acquired on hire purchase
- borrowings for business purposes, and
- loans provided by a partner to a partnership for business purposes.

Examples of non-deductible interest expense include interest incurred on:

- money borrowed to acquire shares in the company in which the taxpayer was employed (ie not deductible against the taxpayer's employment income)
- loans raised specifically to pay dividends (this is an expense relating to the distribution of profit rather than an expense relating to the earning of profit)
- money borrowed to acquire private assets (eg a house, car or television set) — but mortgage interest on residential property is deductible in calculating the net annual value (NAV) of the property under s 10(10) (the amount of NAV of one owner-occupied property in excess of $150,000 is deemed to be income, up to YA 2009), and
- money borrowed to pay income tax.

¶7-415 Qualifying borrowing costs

From YA 2008, qualifying borrowing costs (other than interest expenses) incurred on borrowings used to acquire a capital asset to be used in the production of income are deductible, provided that such costs are incurred to substitute for interest expense or reduce interest costs (s 14(1)(a)(ii)). This is to acknowledge that businesses borrowings are now taking more innovative and non-traditional forms. The prescribed qualifying borrowing costs are as follows:

(1) guarantee fees paid to a guarantor so that the borrower can enjoy lower preferential interest rates

(2) bank option fees paid to the lender to keep the interest rate on the relevant borrowing at a fixed level or within a specified range

(3) discounts on notes or bonds with zero or below market interest rates (see below)

(4) premiums on the redemption of notes or bonds with zero or below market interest rates (see below)

(5) prepayment fees/early redemption fees paid to the lender upon the early redemption of borrowings (ie the fees representing compulsory adjustments to the interest obligation of the borrower)

(6) extension fees paid to the lender to extend the repayment date of the borrowing (ie the fees representing compensation to the lender for the time value of the money borrowed for the extended period)

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(7) increased costs (ie any costs resulting from upward interest rate adjustments upon the occurrence of certain event(s) as specified in the loan agreement)

(8) interest rate cap premiums (ie upfront payments made to cap the interest rate at a certain level)

(9) interest rate swap payments (ie payments made to protect the borrower against interest rate fluctuations)

(10) conversion fees paid to the lender to convert the interest rate charged from a prime based rate to a lower swap rate, and

(11) cancellation fees paid to the lender when the loan or any part of it is cancelled, the fees representing adjustments of the interest return to the lender.

With effect from YA 2014, the prescribed qualifying borrowing costs would include the following:

(1) amendment fees

(2) front-end fees, and

(3) back-end fees.

(See IRAS e-Tax Guide "Tax Deduction for Borrowing Costs other than Interest Expenses (2nd Ed)", published on 18 August 2014.)

Discount/Premium on notes or bonds with zero or below market interest rates

For discounts on bonds/notes and premiums on the redemption of bonds/notes, the tax deduction will be granted at the point when the discounts or premiums are incurred by the issuer.

Example 4

On 1 July 2015, Company A issued a three-year bond with a par value of $100 at a discounted price of $97. The discount of $3 can be deducted only in YA 2019 when Company A pays off the bond at maturity date, ie 30 June 2018.

In 2015, Company B issued a five-year bond with a par value of $100 and $2 premium to be paid upon redemption of the bond on 30 September 2020. In YA 2021, Company B can claim a deduction for the $2 premium when the premium is paid on 30 September 2020.

Note that under FRS 39, an issuer is required to recognise any "interest expense" (representing the non-cash discount/premium calculated using the effective interest method) over the tenure of the bonds/notes issued for a capital purpose. However, for tax purposes, such amount charged to the profit and loss account in accordance with FRS 39 will not be allowable. The issuer has to make the necessary tax adjustments when preparing the income tax return.

In the situation where the notes/bonds were issued prior to the basis period for YA 2008, no deduction is allowed for any discounts and/or premiums attributable to the pre-YA 2008 period. To determine the amount of discount/premium deductible for

YA 2008 and subsequent YAs, the IRAS has prescribed that the amount of discount/premium attributable to the pre-YA 2008 period should be computed on a straight-line basis, unless there is a more satisfactory method of apportionment.

Example 5

Company C (with a 31 December year-end) issued a five-year bond on 1 January 2006 at a discounted price of $90. When the bond matured on 31 December 2010, Company C would not be claiming any deduction for the $10 discount in YA 2011. Using the straight-line basis, the discount of $2 attributable to the period before YA 2008 (ie one year) would not be deductible. The amount of discount deductible in YA 2011 is $8 (4/5 × $10).

If Company C issued the five-year bond on 1 January 2007 at a discounted price of $90, when the bond matured on 31 December 2011, Company C would be able to claim full deduction for the $10 discount in YA 2012 since no discount from the bond would be attributable to any period before YA 2008.

The same method as above will apply to determine the amount of discount/premium attributable to any pre-commencement business period, as any expenses incurred prior to the commencement of business are generally disallowed.

Borrowing costs incurred on refinancing of loans

Qualifying borrowing costs incurred on the refinancing of loans will also be granted tax deduction, similar to the administrative concession for interest expenses incurred by taxpayers on loans to refinance earlier loans (see ¶7-410).

¶7-420 Rent

Rent payable in respect of any land or building or part thereof occupied for the purpose of acquiring income is deductible (s 14(1)(b)). Where part of the premise is occupied for non-business purposes (eg the upper floor of a shop-house is the taxpayer's residence), apportionment of rental expense is required.

¶7-430 Repairs and renewals

Case principles suggest that a repair is the replacement of a subsidiary part whereas a renewal is the replacement of the whole, or substantially the whole, subject matter (*Lurcott v Wakely & Wheeler* (1911) 1 KB 905). A renewal is, therefore, at common law, capital in nature. What is substantially the whole and what is merely a subsidiary part is a question of degree and must be determined according to the facts in each case.

In *CIT v Rubber Co Ltd* (1961) MLJ 191, the construction of a new water-gate to replace one (out of ten) that leaked was held to be a repair of part of a drainage system. The High Court of Malaya held that the vital consideration is:

> "the size, extent and importance of that work done in relation to the taxpayer's whole income producing undertaking and whether or not it can be said that such work has resulted in the creation of a new asset".

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Section 14(1)(c) provides a deduction for expenses "incurred for repair of premises, plant, machinery or fixtures employed in acquiring the income or for the renewal, repair or alteration of any implement, utensil or article so employed". However, no deduction will be made for:

(i) the cost of renewal of any plant, machinery or fixtures for which CAs under s 19 or 19A have been granted on the initial purchase, or

(ii) the cost of reconstruction or rebuilding of any premises, buildings, structures or works of a permanent nature.

Section 14(1)(c) therefore explicitly allows a deduction for certain types of renewals — this is also known as the replacement basis of deduction. If a replacement asset contains an element of improvement over the replaced asset, in principle, an amount that represents the improvement will not be allowed as it is prohibited under s 15(1).

Example 6

If a landlord replaces an air conditioner (cost $2,000) in his rented property with a different model that costs $2,300 but is otherwise similar in function or efficiency (eg in terms of energy consumption), the full amount of $2,300 will be deductible.

Generally, a tax deduction can be claimed for repairs or replacements to any income-producing property, which do not materially add to its value or appreciably prolong its life but merely keep it in good and efficient operating condition. However, improvements, additions and alterations to property will not qualify for deduction (but see exceptions under s 14H and 14Q in ¶7-850).

Exceptions to the "renewal" prohibition

Approved expenditure on any addition or alteration to business premises owned or leased by a person for the purpose of facilitating the mobility or work of any disabled employee qualifies for a special deduction under s 14H (see ¶7-850). In the absence of s 14H, such expenditure, being capital in nature, would not be deductible.

Any person carrying on a trade, business or profession is allowed to claim special tax deduction under s 14Q for qualifying expenditure incurred on renovation or refurbishment works for the purpose of that trade, business or profession (see ¶7-850). The qualifying expenditure has to be incurred on or after 16 February 2008. Note that where such costs are incurred to replace a renovation item that was previously granted a deduction under s 14Q, such costs can qualify for deduction under s 14(1)(c) as long as the conditions in s 14(1)(c) are satisfied and the deduction is not denied under s 15.

Repairs of recently acquired assets

Repairs are sometimes incurred on an asset that has been acquired second-hand; they are commonly referred to as initial repairs.

If the repairs are incurred to put the asset in a position ready to produce income, ie to render the asset in a working condition, they would be of a capital nature and would not be deductible. A case authority is *Law Shipping Co v IR Commrs* (1924) 12 TC 621.

In that case, the taxpayer had purchased a steamship for £97,000 at a time the ship was due for a "Lloyd's survey", which is carried out to ascertain that the ship was in a seagoing condition. As the ship had already been loaded with cargo at the time of purchase, an exemption from the survey was granted and the ship set out on a voyage to Port Said. On the return of the ship, the taxpayer undertook the Lloyd's survey and incurred £51,558 to restore the ship to the condition it was in at the time of the previous survey. The Court held that only that proportion of the repairs that was referable to the period beginning from the time when the taxpayer became the ship owner was deductible (£12,000). The balance was in effect capital expenditure — the purchase price of the ship was lower to the extent that the repairs had been allowed to accumulate.

It follows that if a taxpayer incurs repairs on a machine he has purchased to put it in a position ready to produce income, the repairs would not be deductible. To be deductible, the repairs must be of the kind that merely makes good the defects in an asset that arise from the claimant's profit-earning operations. For example, if a company immediately incurs an amount of $130,000 on repairs to a machine it had purchased for $200,000 in order to bring the machine to an operationally ready state, the repairs of $130,000 are more likely to be in the nature of capital.

The *Law Shipping* principle could be applied to repairs to leased assets. In *S Ltd* (1953) SB XII, the taxpayer incurred repair and renovation expenses on premises it had recently leased. It was held that the taxpayer had effected improvements and the whole expenditure was capital in nature.

Not all repairs that are made to a newly acquired asset, however, are of a capital nature (*Odeon Associated Theatres Ltd v Jones* [1972] 1 All ER 681).

In the *Odeon* case, the taxpayer, who was a cinema theatre exhibitor in England, purchased a cinema for £240,000 in January 1945. During the preceding war years, owing to wartime restrictions, owners of cinema theatres in England could spend only a small amount of money on repairs and so cinemas in England were generally in a state of disrepair. The purchase price that the taxpayer paid for the cinema was therefore not affected by the fact that it was in disrepair on the date of its acquisition. Despite the state of disrepair, the taxpayer put the cinema to use as an income-earning asset immediately and continued to do so for several years before it incurred deferred repairs. The dispute was whether these deferred repairs were deductible. The courts held that they were deductible, and distinguished the *Law Shipping* case on the grounds that in the *Law Shipping* case:

(a) the purchase price was substantially lower than if the vessel had been in good repair at the date of purchase

(b) the asset was not in a profit earning state at the time of purchase, and

(c) the courts did not then have evidence of accounting practice.

¶7-440 Bad and doubtful trade debts

For income tax purposes, a debt is a legally enforceable obligation for payment of money. Section 14(1)(d) uses the terms "bad debts" and "doubtful debts". A "bad debt" is not a debt that is merely doubtful (eg a debt owed by a bankrupt individual with no assets would qualify as a bad debt). As for "doubtful debts", business

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prudence and the *Companies Act (Cap 50, 2006 Revised Ed)* require adequate provision to be made for debts of a doubtful nature when determining the financial results for a particular period. Section 14(1)(d) allows a deduction for bad trade debts and for specific provisions for doubtful trade debts.

Bad trade debts

The following conditions must be satisfied before a debt that has become bad can be deducted:

- *Debt incurred in respect of s 10(1)(a)*

  To be deductible, a debt must have been incurred in any trade, business, profession or vocation (s 14(1)(d)) and on revenue account (*Curtis v J&G Oldfield Ltd* (1925) 9 TC 319).

  In *X v CIT* (1950–1985) MSTC 525, a loan made by a building contractor that had become irrecoverable was not deductible as it was not an essential part of the taxpayer's business or necessary for the business. The taxpayer's counsel had also failed to prove that there was a practice or custom in Singapore among building contractors of borrowing and lending money not for profit but as an activity ancillary to their business.

- *Debt must be included as a trading receipt*

  Section 14(1)(d)(ii) requires that any claim for deduction must relate to a debt that had been included in the income of a trader in the year it was derived. For example, where goods are supplied to a customer and the debt has become bad, the bad debt is deductible. In contrast, for finance and money lending businesses, loans to clients are not included in the income of the year in which the loans are made. If the loans become bad, they would not qualify for deduction under s 14(1)(d) (the write-off of these loans would be deductible under s 14(1), however, on the basis that the loss relates to money that is their stock-in-trade or circulating capital).

- *Debt has become bad during the basis period*

  The debt must have become bad during the basis period relating to the YA in which the claim for deduction is made.

- *Debt must be bad*

  For commercial reasons, a taxpayer may decide not to take any action to recover an outstanding trade debt because he has assessed the chances of recovery to be slim. In practice, however, the IRAS normally asks whether the taxpayer has taken any legal action and, if so, what the outcome of the legal action is.

- *Business must be carried on in the basis year*

  A bad debt cannot be deducted if it is in respect of a business that has closed down or has been discontinued.

In a re-organisation or purchase of business, a purchasing company may take over the debts of the vendor company. If such debts subsequently become bad, a claim by the purchasing company for deduction will not be admitted because the debts, when they were incurred, had not been included as a trading receipt of the purchasing company.

Conversely, the purchasing company will not be taxable on any recoveries of trade debts that had been written off by the vendor company. In both instances, the debts were owed by the vendor company and the loss or gain did not relate to the business of the purchasing company. However, in the case of a corporate amalgamation, where the trade debts taken over by the surviving amalgamated company subsequently become bad, doubtful or impaired, a claim for deduction by the surviving amalgamated company would be allowed (s 34C(21)). All subsequent recoveries by the surviving amalgamated company (including those in respect of bad or doubtful debts or impairments previously allowed to the amalgamating company) would be taxable (s 34C(22)).

In the case of a continuing business, any recoveries made in respect of trade debts previously written off are included in the calculation of s 10(1)(a) income for the basis period in which the recovery is made (s 14(1)(d)(i)).

The following are examples of deductible and non-deductible debts:

(a) deductible debt:

- a customer who owed $4,300 to a company has been killed in an accident (if the debt cannot be recovered from his estate) or has become a bankrupt

(b) non-deductible debt:

- a loan by a manufacturing company to an employee that has become bad because the employee has absconded and could not be traced (such a debt is a non-trade debt)
- where there is a guarantor to a trade debt, the Comptroller may refuse to allow a taxpayer's claim for deduction under s 14(1)(d). The debt would not have been proved to the Comptroller's satisfaction to have become bad if the taxpayer can recover the debt from the guarantor
- where an advance has been made to a partner of a firm and it is written off on the partner's retirement, the write-off is not deductible
- the mere fact that a debtor is in financial difficulties will not by itself satisfy the Comptroller that the debt is bad and qualifies for deduction.

Impairment loss — Application of FRS 39

FRS 39 requires the adoption of fair-value accounting to measure financial assets such as loans and receivables. Where the fair value of the financial asset falls below its cost or carrying value, the impairment loss has to be recognised in the accounts. With the implementation of FRS 39, unless a company opts out of the FRS 39 tax treatment, specific and general provisions for bad and doubtful debts would no longer be made. The IRAS has indicated in its e-Tax Guide "Income Tax Implications Arising from the Adoption of FRS 39 — Financial Instruments: Recognition & Measurement", published on 29 June 2012, that impairment losses incurred on financial assets on revenue account will be allowed as a deduction.

However, the IRAS e-Tax Guide does not stipulate any conditions for the deduction of impairment loss. It is likely that the IRAS will continue to require taxpayers to substantiate that the impairment losses relate to trade debts that are irrecoverable as

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explained above. Note that any reversal of the impairment losses on a revenue account in a subsequent year will be taxable as income in that year. For more information on FRS 39, see the IRAS e-Tax Guide above.

Provision for doubtful trade debts

Specific provisions for doubtful trade debts are deductible, provided that the Comptroller is satisfied that the debts cannot be recovered (s 14(1)(d)).

General provisions made for bad and doubtful debts are, however, not deductible under s 14(1). General provisions are arbitrary and are normally made by taking a percentage of the total outstanding trading debts and debiting this amount to the revenue account.

Example 7

The profit and loss account of a manufacturing company has been debited with a bad and doubtful debt expense of $9,700 comprising:

		Allowed/(Taxable)	*Not allowed*
	$	$	$
Loans to staff written off	2,000		2,000
Bad debts written off (trade)	4,000	4,000	
Trade debts recovered	(1,000)	(1,000)	
Increase in specific provision for doubtful trade debts	1,500	1,500	
Increase in general provision for doubtful trade debts	3,200		3,200
Per profit and loss account	9,700	4,500	5,200

Provisions for impairment losses made by banks and finance companies

Banks (including merchant banks) and finance companies are required under FRS 39 to recognise impairment losses, if any, for their loan accounts. Where impairment losses are made under FRS 39, such losses will be fully allowed as tax deductions. Conversely, any reversal of impairment losses will be subject to tax.

Where banks and finance companies do not have a robust loss estimation process or sufficiently historical loan loss data and are, therefore, unable to provide for impairment losses under FRS 39, they are required to maintain a certain level of collective impairment provisions under MAS Notices 612, 811 and 1005 for banks, finance companies and merchant banks respectively. For a period of five YAs (extended for a further three YAs in the 2009 Budget), such mandatory impairment loss provisions are allowed a tax deduction subject to the caps stipulated under s 14I. This concession was introduced in 2005 and will expire in YA 2016 or YA 2017 depending on the financial year end of the bank or finance company (as it has been extended twice, once in the 2009 Budget and again in the 2012 Budget for a further three years each).

Note that s 14I also applies to provisions made by banks and finance companies for diminution in the value of their investments in securities. From YA 2011, the list of securities has been expanded to include other securities such as registered business trusts and units in real estate investment trusts.

The maximum deductions allowed under s 14I(5) shall not exceed the lowest of:

- 25% of each year's qualifying profits
- 0.5% of the prescribed value of loans and investments in securities, or
- 3% of the prescribed value of loans and investments in securities less the total net amount of all deductions previously allowed under s 14I.

As announced in the 2015 Budget, in recognition that banks and finance companies need to maintain adequate levels of impairment provisions under the relevant MAS Notices as they transit to the new accounting standard on impairment in Singapore, FRS 109, which will be effective for financial years beginning on or after 1 January 2018, the concession will be extended till YA 2019 or YA 2020, as the case may be. All existing conditions of the concession remain unchanged.

¶7-450 Contributions to pension or provident funds

When an employer contributes to a pension or provident fund for employees who are engaged in activities connected with the production of the employer's income, such contributions are deductible if:

(a) the fund is an approved pension or provident fund or a fund constituted overseas, and

(b) the contributions are obligatory according to any employment contract, or the rules of a fund (s 14(1)(e)).

Where an employer contributes to the CPF or a designated approved pension or provident fund, the deduction allowed is limited to the amount of statutory contributions. The statutory CPF contributions are shown in Table 1 of Chapter 5 at ¶5-240. No deduction is allowed for CPF contributions made by an employer in respect of any employee who holds an employment pass, professional visit pass or work permit (s 14(1)(e)(iii)).

From YA 2009, an employer is not allowed to claim deductions for any contribution to a non-obligatory overseas pension or provident fund where the employee in respect of whom such contribution is made has already been granted a tax exemption for such a contribution under s 13N (s 14(1)(e) proviso).

Medisave contributions

An employer can deduct contributions made to the CPF Medisave account of an employee in lieu of hospitalisation benefits or outpatient medical benefits that the employer is obliged to provide under the employee's contract of employment. The deduction is subject to an annual limit of $1,500 (s 14(1)(f)).

Medisave contributions in respect of any employee who holds an employment pass, professional visit pass or work permit are not deductible to the employer (s 14(1)(f) proviso).

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Voluntary Medisave contributions by self-employed persons

Voluntary contributions made by companies to self-employed persons' (SEPs) CPF Medisave accounts are not tax-deductible for companies. Such contributions are taxable in the hands of the SEPs.

However, from 1 January 2011, voluntary contributions made by eligible companies to SEPs' CPF Medisave accounts are deductible (s 14(1)(fa)) and such contributions are also tax exempt in the hands of SEPs (s 13(1)(jc)).

For an SEP who is concurrently an employee, the SEP is eligible for tax exemption on voluntary Medisave contributions up to a maximum of $1,500 per calendar year made by the SEP's employer through the Additional Medisave Contribution Scheme, as well as by the eligible companies. To qualify for the tax benefits, there must be a valid contract between the eligible company and the SEP, which is in force when the contributions are made, and which provides for:

(i) the rental or loan of assets by that company to the SEP, for the SEP to carry on his trade, profession, business or vocation, or

(ii) the provision of services by the SEP to that company, where the SEP and that company are in the same trade, profession, business or vocation.

For any calendar year, tax benefits will be given for contributions not exceeding $1,500 for each SEP, and within the CPF Annual Limit and Medisave Contribution Ceiling.

¶7-460 Religious dues

Deductions are allowed for *zakat*, *fitrah* or any religious dues, payment of which is made under any written law (s 14(1)(g)). *Zakat* is the tithe payable annually in accordance with Muslim law. *Fitrah* is the amount of rice or equivalent value in money payable annually at the end of the month of *Ramadhan* (the fasting month).

DEDUCTIBLE EXPENSES SUBJECT TO RESTRICTIONS

¶7-500 Expenses that are deductible subject to restrictions

The following types of expenses are deductible subject to restrictions:

(a) payments to related employees

(b) expenses for certain types of motor cars, and

(c) medical expenses.

¶7-510 Payments to related employees

Salaries, wages or similar payments, compensation payments for injuries or death, and death gratuities that are made by employers to certain employees are deductible only to the extent that the payments are reasonable having regard to the services performed by the employees (s 14(2)). This restriction applies to payments made to any employee who is the husband, wife or child of:

- the employer

- any partner of the employer
- any individual who controls the employer (either alone or with his spouse and/or child), or
- any individual whose spouse and/or child controls the employer.

¶7-520 Motor car expenses

Sections 14(3), 14(3A), 14(4) and 15(1)(k) govern the deductibility of expenses incurred wholly and exclusively in respect of the motor vehicles employed in the production of income.

The tax treatment for expenses in respect of the following categories of motor vehicles is discussed below (see Chapter 8 at ¶8-100ff for CAs on motor vehicles).

Singapore registered cars (S-plate)

Regardless of whether the taxpayer owns the Singapore registered cars, any outgoings and expenses directly or indirectly related to these cars are not deductible (s 15(1)(k)). No deduction is available for any expenses incurred on the operation and maintenance of the cars. The prohibition of the deduction also applies to the situation where the taxpayer reimburses its employees for the use of their own cars.

Taxis

Expenses incurred in respect of taxis are deductible in full.

Foreign registered cars

Deductions for expenses incurred on a foreign car owned by the taxpayer which is registered outside Singapore and used exclusively outside Singapore are as follows (s 14(3), 14(3A), 14(4)(b) and 15(1)(k)(ii)):

- If the car costs $35,000 or less, all expenses incurred in running and maintaining it are deductible.
- If the car costs more than $35,000, the deduction is restricted to the proportion that $35,000 bears to the actual cost.

Example 8

Company A incurred expenses of $10,000 on the maintenance of a car that is registered and used exclusively outside Singapore. The cost of the car is $45,000. The deductible amount of expenses is $7,778 ($10,000 × $35,000/$45,000). The balance of $2,222 will be disregarded.

The cap of $35,000 was removed from YA 2014.

Where the foreign car is not used exclusively outside Singapore, no deduction can be claimed for expenses incurred. Note that any outgoings and expenses incurred in respect of any hired foreign cars used exclusively outside Singapore are fully deductible (s 15(1)(k)(ii)).

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Motor cars used for instructional purposes

A person who holds a driving school licence or a driving instructor's licence issued under the *Road Traffic Act (Cap 276, 2004 Revised Ed)* and carries on the business of providing driving instruction can claim deduction for expenses incurred on motor cars that are used principally for instructional purposes (ie tuition cars) (s 14(4)(a)). The tuition cars must be registered in the name of the business concerned or in the name of an individual.

Rental cars (private hire cars)

Taxpayers who carry on the business of hiring out private hire cars (ie lessors) can fully deduct expenses incurred in respect of these cars (s 15(1)(k)(iii)).

The lessee, on the other hand, is not allowed to claim any deduction for any expenses incurred on a private hire car.

¶7-530 Medical expenses

Medical expenses incurred by employers for their employees are deductible under s 14 if they are wholly and exclusively incurred in the production of the employer's income. However, s 14(5) places a limit on the amount of medical expenses that qualify for deduction.

From YA 2008, the amount of medical expenses an employer can claim as tax deduction is restricted to 2% of the total remuneration paid to employees where the employer:

- has made ad hoc contributions to the Medisave accounts of at least 20% of its employees (subject to a cap of $1,500 per employee per year) during the relevant basis period
- has implemented the Portable Medical Benefits Scheme (PMBS) or the Transferable Medical Insurance Scheme (TMIS) and has satisfied the qualifying conditions, or
- has provided its employees with inpatient medical insurance benefits in the form of portable medical shield plans ("Shield plans") and has satisfied the qualifying conditions. Note that premiums for riders covering deductibles and co-payments are not deductible.

In all other cases, the amount of maximum allowable medical deduction would vary between 1% and 2% of the total remuneration. The formulae for calculating that amount can be found in s 14(6B).

For details and the qualifying conditions for the PMBS, TMIS and the Shield plans, refer to the Ministry of Manpower (MOM)'s circular "Additional Avenues for Higher Tax Deduction For Medical Expenses" available on its website at www.mom.gov.sg.

For this purpose, "medical expenses" mean expenses incurred in or in connection with the provision of medical treatment and include:

- maternity health care, natal care, and preventive and therapeutic treatment expenses
- expenses for the provision of a medical clinic by the employer

- cash allowance in lieu of medical expenses
- expenses for the provision of insurance against the cost of medical treatment, and
- Medisave contributions deductible under s 14(1)(f).

The "remuneration" of employees includes wages, salaries, leave pay, fees, commissions, bonuses, gratuities, allowances, other emoluments paid in cash by or on behalf of the employer and contributions made to approved pension or provident funds by the employer which are deductible under the Act. Employees' remuneration excludes any director's fee, medical expenses, cash allowance in lieu of medical expense or benefit-in-kind (s 14(8)).

For companies that enjoy concessionary tax treatment, any "excess" of medical expenses over the specified percentage of total remuneration is regarded as income chargeable to tax at the full corporate rate (s 14(6)).

OTHER COMMON DEDUCTIBLE/NON-DEDUCTIBLE EXPENSES

¶7-610 Entertainment expenses

The deduction of entertainment expenditure is governed by s 14(1) subject to s 15. The activities must therefore have a "business perspective" for the expenditure to be deductible. Such expenses may be incurred to entertain current or prospective business associates and customers, eg food and drinks incurred in the local pub or the premises of a country club of which the taxpayer is a member.

The taxpayer is advised to keep proper records with notes on the direct relation of the expense to the business (eg date and place of entertainment, names of persons entertained, amount spent, business discussions that took place, etc).

Club memberships

Where a company incurs an entrance fee to obtain a club membership, the entrance fee (being a capital payment) is not deductible. However, club subscription fees are deductible.

¶7-620 Payments made to employees

Payments made to employees would include salaries, bonuses, commissions, gratuities, allowances, payments in lieu of leave or notice, leave passages, travelling expenses, employee's life insurance premiums, cost of food, provident fund contributions, etc. These payments are deductible if they are incurred in the production of the employer's income. However, certain payments are deductible subject to a restriction, if s 14(2) applies to them (see ¶7-510).

Examples of other deductible expenses include the following:

- Payments made to terminate an employee's service contract for the benefit of the business, eg owing to the employee's inefficiency, insubordination or dishonesty.

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- Employee welfare expenses that are not of a capital nature, eg rent and other costs incurred to maintain a canteen, staff sports club and restrooms, costs of providing uniforms and laundering, tuition fees paid for staff to attend technical or educational classes, and operating costs of childcare centres in the workplace.
- Contractual retrenchment payments regardless of whether the business ceases, this is on the basis that such payments are incurred as part of the pre-existing obligation of the employer when the employee was employed.
- Contractual retrenchment payments paid on termination of employment when trade had ceased, this is on the basis that such payments had accrued on a contingent basis over the years of employment.
- Non-contractual retrenchment payments if business continues, this is on the basis that such payments are incurred for the continuing profitability of the company and therefore, in the production of income.
- Outplacement support expenses if business continues, this is on the basis that such expenses are incurred by the employer for the welfare of the employees.

Examples of non-deductible payments include the following:

- Sometimes, a payment may be made to an employee for agreeing to enter into a restrictive covenant. The payment may require the employee not to perform activities in competition with the employer over a specified location and/or for a period of time after the employment. Such a payment will generally not be deductible to the employer as the employer would be regarded as having acquired an enduring benefit.
- Non-contractual retrenchment payments made to employees on the closing down of a business are not deductible. Such payments are capital in nature and are not incurred in the production of the income from the business. Payments made in connection with a corporate reorganisation by a company to the employees of another company it has taken over are not deductible (*H Rubber Estates Bhd v Director General of Inland Revenue* (1950–1985) MSTC 214; (1979) 1 MLJ 115).
- Outplacement support expenses incurred in the course of a complete cessation of business because such expenses are capital in nature and not "wholly and exclusively incurred" in the production of income.
- Premiums or contributions made to an unapproved provident fund or scheme constituted in Singapore for the benefit of an employee (s 15(1)(i)).

Director's fees and employee bonuses

For taxability of director's fees and employee bonuses, see ¶5-210.

Under the general deduction formula in s 14(1), director's fees and employee bonuses may be claimed as a deduction only when they are incurred, ie when they become due and payable.

In practice, the IRAS will allow a deduction of director's fees approved in arrears and non-contractual bonuses for the year in which they are properly ascertained and accrued as expenses in the payer's financial accounts in accordance with generally accepted accounting principles. For example, director's fees and non-contractual bonuses properly ascertained and accrued as expenses in the financial accounts for the year ended 31 December 2014 but declared and paid shortly after the year end will typically be allowed as a deductible expense for the year ended 31 December 2014 (ie YA 2015).

Director's fees approved in arrears

Director's fees approved in arrears are deductible for the year in which they are accrued but only if the fees are paid shortly after they are accrued in the financial accounts. The fees should be tabled and put to vote at the annual general meeting (AGM) in which the financial accounts for the accounting year concerned are voted and approved (the relevant AGM). In other words, for the IRAS to allow a deduction, there must be certainty on both the amount and the time of payment of the expense accrued.

When a company claims a deduction for director's fees, it is required to provide the following information in its tax computation:

(a) the date on which the director's fees were approved

(b) the amount approved

(c) the year in which any unapproved amount is written back (if applicable), and

(d) the amount (if any) of director's fees approved in arrears at the relevant AGM but the directors were entitled to the fees only after the accounting year in which such fees were approved.

Non-contractual bonuses

Like director's fees approved in arrears, non-contractual bonuses are deductible for the year in which they are accrued but only if the bonuses are paid shortly after they are accrued in the financial accounts. For non-contractual bonuses, the amount accrued should be paid within a year of the accounting year in which the expense was accrued.

Situations where tax deductions of director's fees or bonuses will not be allowed

The IRAS will not allow claims for deduction of director's fees or employees' bonuses made for a year where the amount and/or the timing of the payment are not properly ascertained. The IRAS has given the following examples:

(a) the amount of director's fees to be approved in arrears was not put to vote at the relevant AGM. For example, an amount of director's fees accrued in the year ended 31 December 2014 and to be approved in arrears was not put to vote at the relevant AGM

(b) the amount of director's fees to be approved in arrears was put to vote at the relevant AGM but was not approved and was not written back in the financial accounts within the accounting year in which the relevant AGM was held

(c) the amount of director's fees was approved in arrears at the relevant AGM, but the directors were not entitled to the fees either on the date of such approval or within the accounting year in which the fees were approved, or

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(d) the amount of non-contractual bonuses accrued for an accounting year was not paid within a year of the accounting year.

The Annex to the IRAS e-Tax Guide "Tax Treatment of Director's Fees and Bonuses from Employment (2nd Ed)", published on 12 September 2014, shows the various scenarios illustrating whether a company will be allowed deduction for fees payable to its directors.

Annex – Amount of tax deduction that will be given to a company for fees payable to its directors under various scenarios[16]

Scenario	Director's fees (to be approved in arrears) recorded in the accounts for the year ending 31 Dec 2012 (A)	Director's fees put to vote at the AGM (held in 2013) where the accounts for the year ending 31 Dec 2012 were voted and approved ("the relevant AGM")	Director's fees approved at that AGM (B)	Director's fees not approved at that AGM (A) – (B) = (C)	Unapproved director's fees (C) written-back in accounts for the year ending	Amount of (A) that is deductible in YA 2013	Tax treatment of (C)
1	$500,000	$0	$0	$500,000	31 Dec 2013	$0	The $500,000* is not deductible in YA 2013 as it is not put to vote at the relevant AGM.
1a	$500,000	$300,000	$300,000	$200,000	31 Dec 2013	$300,000	The $200,000* is not deductible in YA 2013 as it is not put to vote at the relevant AGM. * - Such amounts when written-back in the accounts, are not taxable.
2	$500,000	$500,000	$500,000	Nil	NA	$500,000	NA
3	$500,000	$500,000	$400,000	$100,000	31 Dec 2013	$500,000	The $100,000 is deductible in YA 2013 as it is put to vote at the relevant AGM and written back in the accounts within the accounting year in which the relevant AGM was held. The $100,000 written-back will be brought to tax in YA 2014.

[16] In all the scenarios, the directors are entitled to the directors' fees once the fees are approved at an AGM.

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Scenario	Director's fees (to be approved in arrears) recorded in the accounts for the year ending 31 Dec 2012 (A)	Director's fees put to vote at the AGM (held in 2013) where the accounts for the year ending 31 Dec 2012 were voted and approved ("the relevant AGM")	Director's fees approved at that AGM (B)	Director's fees not approved at that AGM (A) – (B) = (C)	Unapproved director's fees (C) written-back in accounts for the year ending	Amount of (A) that is deductible in YA 2013	Tax treatment of (C)
3a	$500,000	$500,000	$400,000	$100,000	31 Dec 2014	$400,000	The $100,000 is not deductible in YA 2013 as it is not written back in the accounts within the accounting year in which the relevant AGM was held. The $100,000 written-back will not be brought to tax in YA 2015.

Source: IRAS e-Tax Guide "Tax Treatment of Director's Fees and Bonuses from Employment"

The Annex is extracted from the IRAS e-Tax Guide. Visit www.iras.gov.sg for more information.

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¶7-630 Trading stock

Under the accrual basis of accounting, changes in the value of trading stock and work-in-progress between the beginning and end of a trader's financial year are taken into account in arriving at the trading profit. The valuation of trading stock and work-in-progress therefore affects the determination of profit.

The term "trading stock" is not defined in the Act (except for the purposes of valuation on the discontinuance or transfer of a trade or business) and therefore takes its normal commercial meaning. It refers to all goods or commodities in which the particular person deals, in the sense of buying and selling in the course of his business activity. It does not include a commodity that is acquired for the purpose of being let to hire (*H Mohamed & Co v CIT* 107 ITR 637). It includes all raw materials and supplies acquired for sale that will, at some stage, become part of the product intended for sale and all finished or partly finished goods (ie work-in-progress). Only goods in which the title is vested in the taxpayer are taken into account. Hence, goods received by a retailer on consignment are not his trading stock.

The Act does not specify the basis of stock valuation for tax purposes. The Comptroller accepts stock valuation based on the lower of cost and net realisable value, which is the basis prescribed by the local accounting standard. This basis of stock valuation has case law support in *Whimster v Commrs of IR* (1925) 12 TC 813 and *Duple Motor Bodies Ltd v Ostime* (1960) 39 TC 537.

However, in the determination of "cost", the local accounting standard permits the use of more than one method of calculating cost of trading stock. The methods include specific identification, "first in, first out" (FIFO), and "weighted average cost". The Comptroller accepts any of these methods, but the taxpayer must show that the method he has adopted for valuing trading stock fulfils the following conditions:

- it must clearly reflect income
- it must conform to commercial and accounting practice, and
- it must be consistently applied from year to year.

Where a trader changes the method of valuation of trading stock, the trader must make this apparent in the accounts or notify the Comptroller of the change. The Comptroller will normally accept a change if it does not frustrate the principles of ascertaining trading income.

In *Sharkey v Wernher* (36 TC 275), the House of Lords ruled that a stud farm owner who had transferred some horses to her private stables was required to take in the market value of the horses in the stud farm accounts. The IRAS accepts this principle, and trading stock that is appropriated from a business for private enjoyment must be brought in as a trading receipt at the market value prevailing on the date of appropriation.

Valuation on discontinuance of business

Section 32 governs the situations where stock valuation has to be made on the discontinuance or transfer of a trade or business. The closing stock in the sellers' accounts will be taken to be the amount realised on the sale or the value of the consideration given for the transfer if (s 32(1)(a)):

(a) the trading stock is sold or transferred for valuable consideration to a person who carries on or intends to carry on a trade or business in Singapore, and

(b) the cost of the stock is deductible in computing the profits of the latter's trade or business.

If both the above conditions are not satisfied, the value of the closing stock will be taken to be the open market price at the discontinuance or transfer of the trade or business (s 32(1)(b)).

Trading stock means property of any description, whether movable or immovable, being either:

(a) property such as are used in the ordinary course of trade or business or would be sold if it were mature or if its manufacture, preparation or construction were complete, or

(b) materials such as are used in the manufacture, preparation or construction of any such property in (a).

The aim of s 32 is to prevent tax avoidance by manipulating stock values on the cessation of one business and the commencement of another. In *HC & Anor v CIT* (1950–1985) MSTC 656; (1970) 2 MLJ 259, the Court held that the trading stock (comprising land that was neither sold nor transferred for valuable consideration) of the taxpayer upon its discontinuance of trade had been correctly valued by the Comptroller under s 32(1)(b) at market value on the date of transfer.

¶7-640 Losses through theft, misappropriation, etc

A taxpayer may incur losses through theft, embezzlement, defalcation or misappropriation. Where the loss is of a non-capital nature and it is incidental to the business carried on, it will be deductible.

In an Australian case, a taxpayer was robbed of the day's takings on his way to the bank. Such loss was held to be deductible because it was the kind of casualty, mischance or misfortune that was a natural or recognised incident of the taxpayer's operations (*Charles Moore & Co (WA) Pty Ltd v FC of T* (1956) 95 CLR 344). A New Zealand court relied on the *Charles Moore* decision and allowed a deduction in *Gold Bank Services Ltd v Commr of IR* (1960) 13 ATD 160 where a seven-day 24-hour service station was robbed of its weekend cash trading receipts.

Losses suffered by a trader through the negligence or dishonesty of his employees are deductible, if the losses arise from the need to assign certain duties to employees and are therefore incidental to the trade (*Curtis v J&G Oldfield Ltd* (1925) 9 TC 319). Examples of deductible losses include embezzlement of cash by an employee, bills collected but not accounted for, and pilfering of trading stock. Any recovery from an employee of embezzled money that has previously been allowed a deduction is taxable (*Re AA* (1960) FB XXIII).

By contrast, where a loss arises from a theft or misappropriation by a person who has control of the business operations, the loss may not be deductible. For example, if a company has incurred a loss arising from an overdrawn account that a controlling director has with it, the loss would not be deductible because it could not be said to have been wholly and exclusively incurred in the production of the trading income. In

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AQP v CIT (2011) MSTC ¶70-011; [2011] SGHC 229, the Singapore High Court affirmed that losses caused to a company by a fraudulent director were not deductible for income tax purposes.

On appeal to the Court of Appeal, *AQP v CIT* [2013] SGCA 3, the Court of Appeal observed that defalcations by employees who do not have overriding power or control in their organisation are allowed because courts across jurisdictions accept that defalcations by employees with no overriding power or control are, in general, an inevitable fact of commercial life and, in particular, in the conduct of business. However, defalcations by employees who have overriding power or control in their organisation are not necessarily treated in the same manner. Organisations should have checks and balances put in place to prevent abuses by employees with overriding power or control. However, the Court noted that the law does not demand a perfect system of check or balances. If a sufficient system of checks and balances has been put in place by the employer and defalcations nevertheless occur as a result of an employee with overriding power or control abusing his position, the court would generally permit a deduction of the amount of such defalcations. What constitutes a sufficient system of checks and balances would be a question of fact and would vary from situation to situation depending on the precise factual matrix and context concerned. In the circumstance of *AQP*, the Court of Appeal remitted the case to the Singapore Board of Review to adduce the necessary evidence on whether the employee was in a position of overriding power or control in the organisation, and if so, whether a sufficient system of checks and balances had been put in place by the organisation on the facts of the case.

¶7-650 Legal and professional expenses

Generally, legal and professional expenses in respect of litigation or advice are deductible if they are incurred as an ordinary incident of the taxpayer's business and are not capital in nature (unless a special deduction such as s 14A applies — see ¶7-850). For example, legal fees incurred to recover outstanding trading debts are deductible.

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In practice, the Comptroller allows a deduction for expenses incurred by a person carrying on a trade, business, profession or vocation for the preparation of tax returns and computations and, generally, for tax advice. But professional expenses incurred in connection with an income tax appeal are not deductible (see also *Smith's Potato Estates Ltd v Bolland* (1948) 30 TC 267).

Examples of deductible legal or professional expenses are:

- accounting fees for preparation of accounts
- legal fees for drafting agreements of sale of trading goods
- fees relating to acquisition, development and sale of properties in the case of a property dealing business
- fees for renewal of leases and licences
- subscriptions to professional bodies
- fees to recover trade debts

- fees to contest employees' claims for arrears of remuneration, and
- fees incurred by the taxpayer to obtain refunds of sums paid for goods, enforce delivery of goods or seek an advantage that can be identified with the day-to-day running of the business, ie extension of trading hours.

Examples of non-deductible legal or professional expenses are:

- costs for increase or reduction of share capital or for altering the Memorandum and Articles of Association of a company
- fees relating to the flotation, registration, winding up or liquidation of a company
- fees relating to the formation, variation or dissolution of a partnership
- fees to obtain a trading licence
- fees to obtain a new lease
- fees relating to mortgages and issue of debentures, and
- fees in relation to income already earned, eg income tax appeals.

¶7-660 Head office and management expenses

Management services include investment management, financial management, personnel management, company secretarial services, company payroll management, company tax and tax planning services.

Where the "head office" of a group of companies provides services to the group, the Comptroller accepts that a partial recoupment of the expenses from the group members is justifiable and acceptable. This is because a centralised "expertise" results in more effective research, economy and the ability to stay abreast of competitors in production, marketability, public relations and effective management. The conditions for deduction are that:

(a) the arrangements are at arm's length, and

(b) the allocation of expenses is consistent.

The allocation of administrative expenses by way of a management fee or charge should adhere to the following rules:

(a) all direct expenses applicable to each territory must be charged to that territory, and

(b) all indirect common expenses should be allocated using a practical and fair basis, and be charged by way of a management fee to the relevant territory.

Where there is a formal agreement between the parties concerned, the agreement can spell out the type of services to be provided, the basis of arriving at the consideration for the services rendered, and the mode of payment. However, where companies are members of a group or where branches are involved, since one party has apparent or clear control over the other, any such agreement may be subject to the Comptroller's scrutiny. The absence of a formal agreement will not, however, in itself jeopardise deductibility.

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There is no single accepted method or formula for allocating head office expenses, and the Comptroller may scrutinise the appropriateness of any method adopted by a taxpayer. Some common bases of allocating total head office expenses to a Singapore branch are:

- gross profits or turnover
- net profits (using this basis, no expenses will be allocated to the branch if the branch is operating at a loss), and
- total asset basis using the formula:

$$\frac{\text{Total Singapore branch assets} \times \text{Total head office expenses for branches}}{\text{Total head office assets}}$$

¶7-670 Taxes paid

The Act specifically prohibits the deduction of:

- amounts paid or payable in respect of income tax in Singapore or tax on income (by whatever name called) in any country outside Singapore (s 15(1)(g))
- amount of GST paid or payable by a taxpayer who is required to register under the GST Act but has failed to do so, or who is entitled to credit the amount of GST payable as an input tax (s 15(1)(h)), and
- amount of output tax paid or payable under the GST Act that is borne by a person registered as a taxable person under that Act (s 15(1)(m)).

Property tax and other levies

Taxes paid upon any property (land and buildings) that is used for the purpose of producing income will be deductible under the general deduction formula. Where no income is derived in respect of a vacant property awaiting development, any tax or quit rent paid thereon would not be deductible. Property tax is levied on the annual value of a property.

Levies and dues such as import/export duties, renewal of licence fees, surcharges, etc, are deductible.

Stamp duties

Generally, stamp duty incurred in respect of a capital transaction is not deductible. Conversely, if it was incurred for a revenue transaction, it is likely to be deductible. For example, stamp duty charged on the conveyance of land is not deductible if the purchase or sale of land is a capital transaction. Stamp duty levied in respect of a first tenancy agreement is not deductible if it is of a capital nature. Any stamp duty levied on the renewal of a tenancy is, however, deductible by concession. A similar treatment is accorded to stamp duty levied on a loan agreement taken for business purposes and to stamp duty on renewal of the loan.

¶7-680 Other miscellaneous expenditure

Pre-commencement and incorporation expenses

Expenses incurred before the commencement of business are not deductible. Note that the IRAS allows, as a concession, a deduction for certain pre-commencement expenditure incurred in the context of a trade or business (see ¶7-340).

Expenses incurred on the following activities are not deductible if the business has not commenced:

- preparation of feasibility reports
- preparation of project reports, and
- conduct of market surveys or other surveys to gauge the viability of the proposed business.

Incorporation expenses are not deductible. Examples include:

- legal charges for drafting of Memorandum and Articles of Association
- costs for printing of the first/initial sets of Memorandum and Articles of Association
- fees for company registration
- costs relating to the issue of shares or debentures, underwriting commission or brokerage, and
- charges for drafting, typing, printing and advertisement of the prospectus.

"Keyman" insurance

In determining whether keyman insurance premiums are deductible, the IRAS has clarified the following:

- The onus is on the company to show that the life insurance policy was bought to secure compensation for the company if profits were lost as a result of the death of the insured. The policy must remain the property of the company, ie the benefits under the policy should not be assigned to the insured or to the insured's family.
- The insured must be a key person in the business of the taxpayer. The company must show that the insured possesses special qualifications, and that the loss of the insured would significantly affect the company's business. It must show that the insured's special qualities have been pivotal in bringing profits to the company. Professional qualifications, special abilities, personal connections, business acumen and experience may qualify as "special qualifications".
- The capital sum insured must be directly related to the profits attributable to the services of the insured. Reference is made to the responsibilities of the insured for the company operations. The responsibility could be prime, shared or contributory.

The IRAS has further clarified:

(a) where the policy is to insure the company against the loss of profits arising from the disability of the keyman, the premium would also be deductible, subject to the same condition that the capital sum assured must not exceed the annual

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profits of the company that is attributable to the keyman (being insured against disability)

(b) where the policy provides for a cash surrender value or an investment value, the premium would be regarded as not wholly and exclusively incurred in the production of the company's income and therefore not deductible. This is regardless of the type of insurance the policy is classified under (eg life insurance, endowment insurance, crisis cover plus, group personal insurance, etc)

(c) where the benefit from the policy accrues to the keyman in his personal capacity (such as in cases where the keyman is the sole proprietor of a business, or the shares of the company are substantially owned by the keyman together with his relatives), the premium would be regarded as not wholly and exclusively incurred in the production of income and therefore not be deductible

(d) where the policy provides for a capital sum assured that exceeds the company's annual profits, the premium would not be deductible for the same reason as in (b) and (c), and

(e) where the loss of the keyman would affect the company's entire business structure such that the company could no longer carry on its business, the premium would be in respect of the capital structure of the company and not merely for the loss of profits and therefore would not deductible.

(See IRAS e-Tax Guide "Deductibility of 'Keyman' Insurance Premiums", published on 29 June 2012, which replaces the previous e-Tax Guide "Deductibility of 'Keyman' Insurance Premiums".)

If the insurance premiums qualify for deduction, any insurance recovery will be taxable as a trading receipt.

Overseas travelling expenses

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Generally, overseas travelling expenses that relate to the taxpayer's current business activity are deductible under s 14. The Comptroller may request evidence (eg dates of travel, places visited, persons interviewed, business negotiated, etc) before allowing the expenses. If a holiday is included in the trip or if a spouse accompanies the taxpayer in a private capacity, a proportion of the expenses claimed could be rejected.

A taxpayer who carries on a business in Singapore may incur deductible overseas travelling expenses, such as those expenses incurred to:

- attend to the complaints of an overseas customer of an existing product, or
- secure potential customers for an existing product.

Overseas travelling expenses would not be deductible if they are incurred to:

- set up a new manufacturing facility for a different product line
- acquire a new technique for establishing a new service or business
- secure a prospective buyer of an existing business
- investigate the purchase of a new business
- raise money for a new business, or
- conduct market research for a new product line.

Costs of refresher courses and conference expenses

The Comptroller, in practice, allows expenses incurred by doctors, dentists, engineers and other professional persons in connection with refresher courses attended in Singapore or overseas. The allowable expenditure would include travelling, course fees, accommodation and other incidental disbursements. Where an overseas trip is made partly for attending a refresher course and partly for other purposes (eg a holiday), the proportion of expenses applicable to the latter are not deductible.

Expenses incurred for attending conferences are deductible if they are closely connected to the taxpayer's business operations. The conference ought to have the sanction of the professional body to which the individual belongs. Where expenses are incurred in acquiring additional professional qualifications, ie specialisation in certain fields of the profession, they will be treated as capital outlays. Where the taxpayer is a resident individual, however, the taxpayer may qualify for a personal relief under s 39(2)(k) for such expenses (see ¶12-290).

Expenses relating to violation of law

As a general rule, fines and penalties imposed on a taxpayer for violating the law are not deductible as they are not disbursements incurred in the production of income. Income tax penalties for late submission of returns or failure to comply with the provisions of the Act are therefore not deductible. In *Mayne Nickless Limited v Federal Commissioner of Taxation* 84 ATC 4458, the Australian court held that there was no distinction between fines relating to a serious offence and fines for minor regulatory offences.

Foreign exchange losses

Strictly speaking, realised exchange losses on revenue account that arise in the course of a taxpayer's business operations are deductible. The transactions giving rise to the loss must be closely connected with the taxpayer's income-producing activities. Exchange losses that are unrealised or that relate to capital expenditure are not deductible. For example, if a loss is incurred in the purchase of fixed assets from overseas, the loss will not be deductible, being of a capital nature. However, if the loss arises from the purchase of trading stock, it is deductible.

See ¶4-610 for the IRAS treatment of foreign exchange gains and losses that took effect from YA 2004. If the taxpayer does not opt out of the IRAS treatment, the IRAS will accept the taxpayer's accounting treatment for tax purposes so long as the foreign exchange gains or losses are on revenue account and the accounting treatment for them has been consistently adopted. The IRAS treatment will apply regardless of whether the gains or losses are realised. Taxpayers who opt out of the IRAS treatment will be assessed according to the realisation principle.

Company's general meeting expenses

Generally, expenses incurred in arranging, conducting and concluding meetings of shareholders and directors are deductible. In Malaysia, however, the High Court has ruled that although the expenses (comprising postage and food costs) relating to a company's annual general meeting were part of its working expenses, they did not form part of the profit-earning process of the company and, hence, did not rank for deduction (*Sharikat KM Bhd v Director General of Inland Revenue* (1950–1985) MSTC 332; (1972) 1 MLJ 224).

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DEDUCTIONS SPECIFIC TO INCOME SOURCE

¶7-710 Deductions against employment income

Because of the nature of an employment, employees qualify for few deductions. An employer is likely to pay for an employee or reimburse the employee all the expenses incurred in the discharge of his duties.

If an employee is required to meet certain expenses out of his remuneration, the onus is on the employee to prove to the Comptroller's satisfaction that the expenses are incurred wholly and exclusively in the performance of his duties.

Specific expense items

Travelling expenses

Expenses incurred in travelling between one's home and the place of employment (eg an office, site, estate, etc) are not deductible because they are incurred before/after the performance of employment duties. In *Parikh v Sleeman* (1988) BTC 224, a doctor who held part-time employment at three hospitals was not allowed to deduct expenses incurred in travelling between his home and the hospitals. The reason was that he did not start to perform his employment duties until he had arrived at the respective hospitals.

But if a taxpayer can show that his home is the principal place where he carries on his employment, the taxpayer may be able to deduct the expenses of travelling from home to work engagements in other locations.

Expenses incurred in travelling between two places of employment or a place of employment and a place of business are deductible if the taxpayer does not live at either of the places and the travelling enables the taxpayer to engage in income-producing activities. In *Re S* (1953) SB VIII, the pilot of a ship was allowed to deduct expenses incurred in travelling from his office to his ship but not expenses incurred in travelling from his house to the ship. The reason was that his house was not treated as an office despite frequent travel from it.

Entertainment expenses

An employee's entertainment allowance forms part of the employment income and is taxable as such. The employee may be able to claim deduction for entertainment expenses incurred out of the allowance. The Comptroller may reject entertainment claims if, for example, the business element is only incidental to the entertainment.

Professional subscriptions — books, journals, etc

In practice, employees can claim deduction for subscriptions to professional bodies, professional journals and the costs of replacement of technical books. These expenses are deductible if, in the course of the employee's employment, an employee is required to apply his professional knowledge and there is a close nexus between the expenses and the production of the employment income.

Education expenses

Many employees incur expenses to attend general courses and seminars to upgrade their skills and knowledge. These expenses are not deductible against the employment income as they are not wholly and exclusively incurred in the production of the income; in any case, they are private in nature and are therefore not deductible. To promote Singapore's knowledge economy, these expenses may qualify for personal relief under s 39(2)(k) (see ¶12-220).

Cost of clothing

If an employee incurs expenses on clothing to comply with a certain dress code at work, the expenses are not deductible to the employee. The reason is that the clothes serve both business and personal purposes. Therefore, it cannot be said that the employee has incurred the clothing expense wholly and exclusively in performing his employment duties (*Hillyer v Lecke* (1976) STC 490; *Woodcock v IRC* (1977) STC 405).

Non-deductible disbursements

The following are other examples of non-deductible expenses. The expenses are either private or domestic in nature and therefore prohibited by s 15(1)(a), or do not satisfy the general deduction formula of s 14(1):

(a) domestic telephone expenses where an employee receives instructions from the employer over the telephone

(b) cost of domestic servants employed so that a husband and wife can go out to work

(c) cost of litigation to recover outstanding remuneration

(d) relocation costs incurred upon a change of employment

(e) subscriptions to social or sporting clubs

(f) expenditure incurred on account of a physical disability

(g) fee paid to an agency to obtain employment

(h) payment made to an employer in lieu of notice, to secure immediate release from employment (*Commissioner of Inland Revenue v Sin Chun-wah* (1989) 1 HKRC ¶90-010), and

(i) costs of preparing tax returns and computations.

Only a person who derives a s 10(1)(a) source income can, in practice, deduct these expenses.

¶7-720 "Group" treatment for dividend income

For dividend income assessed under s 10(1)(d), all expenses wholly and exclusively incurred in the production of the dividend income are deductible. For example, interest incurred on a loan to purchase shares is deductible against dividend income from those shares. However, where the expenses incurred exceed the dividend income from a block of shares, the excess cannot be set off against dividend income from another block of shares because each block of shares is regarded as a separate source of dividend income.

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As an administrative concession, the IRAS has introduced a "group" treatment whereby the excess expenses incurred in respect of a block of shares may be deductible against the dividend income from other blocks of shares within the same group. Any excess of expenses of any group in any year will be disregarded and cannot be set-off against the net dividend income of another group of dividend income or other sources of income.

Basically, under the "group" treatment, all of a taxpayer's investments in shares are divided into the following groups:

Group 1	Non-income producing shares (whether local or foreign)
Group 2	Shares which produce dividend income for which tax exemption or remission has been granted, including overseas dividend income remitted to Singapore that is exempt from tax under s 13(7A), 13(8) and 13(12)
Group 3	Income-producing shares in overseas companies where dividend income is remitted to Singapore in the year and taxable in Singapore
Group 4	Income-producing shares in overseas companies where dividend income is not remitted to Singapore in the year

Shares are regarded as "non-income producing" if they have not yielded dividend income to their beneficial owners since the date of their acquisition. Shares are regarded as "income producing" if they have yielded dividend income. Shares in Singapore companies on the one-tier corporate tax system fall into Group 2.

In the case of shares in Group 1 or 4, the expenses incurred are not deductible because there is no dividend income that is taxable in Singapore. However, as a concession, expenses incurred in any year in respect of shares in Group 4 may be carried forward for set-off against the foreign dividend income of this group that is subsequently remitted to Singapore (see IRAS e-Tax Guide "Liberalised Treatment of Expenses Incurred in Singapore to Derive Foreign Income", published on 10 October 2014).

In the case of shares in Groups 2 and 3, any deficit arising from any block of shares within any group may be set off against the net dividend income of other blocks of shares within the same group. If, after such set-off, any group has a net deficit, that deficit is not deductible against the net dividend income of any other group or any other sources of income derived by the taxpayer and will be disregarded for tax purposes.

The IRAS' view that the group treatment for dividend income represents a concession is supported by the Court of Appeal decision in *JD Limited v CIT* (2006) MSTC 7,504; [2005] SGCA 52 (see ¶7-410). In that case, the Court of Appeal upheld the view taken by the Board of Review and the High Court that the dividends on each shareholding constituted a separate source of income for purposes of deduction under the general deduction formula of s 14(1) (see also ¶10-500). This means that if a taxpayer had incurred interest expenses of $100 to finance the purchase of UOB shares which give rise to dividends taxable under s 10(1)(d), the taxpayer could deduct the interest expenses only against (and up to) the dividend income from the UOB shares and not against dividend income from all his shares generally.

PRODUCTIVITY AND INNOVATION CREDIT (PIC)

¶7-750 Overview and incentives

The PIC scheme is a broad-based tax incentive scheme that was announced during the 2010 Budget. It is available to all businesses for a five-year period from YA 2011 to YA 2015. The scheme (as announced in 2010) confers a 250% tax deduction or allowance for the first $300,000 of qualifying expenses incurred on each of the six qualifying activities along the innovation value chain. In addition, the combined expenditure cap of $600,000 would apply to each qualifying activity for YA 2011 and YA 2012. For YA 2011 to YA 2013, businesses can elect to convert up to $300,000 qualifying tax deductions or allowances based on a pre-determined rate of 7% into cash payout of up to $21,000 for each YA.

The 2011 Budget simplified and enhanced the PIC scheme in the following four main areas:

(a) The quantum of tax deduction or allowance is increased to 400% of expenditure (up from 250%), for the first $400,000 spent on each qualifying activity (up from $300,000).

(b) The PIC benefits are also made available to R&D done abroad. Previously, only R&D done in Singapore qualified for the benefits.

(c) Businesses are allowed to combine the $400,000 expenditure cap per year for YA 2013 to YA 2015 into a new combined expenditure cap of $1,200,000 over the three years. Previously, businesses were allowed to combine their expenditure cap for YA 2011 and YA 2012.

(d) A simpler and enhanced cash conversion option is implemented where taxpayers can opt to receive, in lieu of tax deduction benefits, a cash payout of up to $30,000 (ie 30% of the first $100,000 of qualifying expenditure).

The 2012 Budget further enhanced the PIC scheme in four main areas:

(a) Cash payout — The cash payout rate is increased from 30% to 60% for up to $100,000 of qualifying expenditure from YA 2013 to YA 2015.

(b) Training — For in-house training courses, certification is not required for qualifying in-house training expenditure incurred up to $10,000 but the total training expenditure cap eligible for deduction remains unchanged at $400,000. Expenditure incurred by a principal on the training of its agent may also qualify for PIC subject to certain conditions.

(c) R&D — Qualifying expenditure is deemed to be 60% of the shared costs for qualifying R&D cost-sharing agreements. The multiple sales requirement is also removed for R&D in software development not intended for sale, but development of software for internal routine administration of businesses is not considered as R&D.

(d) Investments in automation equipment — Qualifying automation equipment acquired on hire purchase with repayment schedule straddling two or more financial years is eligible for the cash payout option.

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The 2013 Budget further enhanced the PIC scheme in two ways:

(a) Intellectual Property (IP) in-licensing — IP in-licensing is included as a qualifying activity under the PIC scheme. With this enhancement, the cost of IP acquisition and in-licensing of IPs is eligible for enhanced allowance or deductions under the PIC scheme up to a combined cap of $400,000 per YA. The cost of IP acquisition and in-licensing of IPs also qualifies for cash payout under the PIC scheme if certain conditions are met. This enhancement takes effect for IP in-licensing costs incurred from YA 2013 to YA 2015.

(b) The scope of PIC automation equipment which qualifies for claims under the PIC scheme is changed with effect from YA 2013 as follows:

- the term "automation equipment" is changed to "IT and automation equipment" to reflect that IT-related software is included in the PIC scheme
- with a view to allow more equipment to qualify for PIC benefits, the IRAS will assess and grant approval for such equipment based on liberalised conditions.

Approval will be granted if the following liberalised conditions are met:

(a) the equipment automates or mechanises the work process whether in whole or in part and whether the work process is core or non-core of the business

(b) the equipment enhances productivity of the business (eg by reducing man-hours, increasing output or improving work processes), and

(c) the basic tool will be included if it increases productivity compared to other existing equipment used in the business or it has not been used in the business before.

The updated list of prescribed PIC IT and automation equipment is available at the IRAS website at www.iras.gov.sg.

In addition to the enhancements announced in the 2013 Budget, a PIC Bonus is also available for YA 2013 to YA 2015. To encourage businesses to undertake improvement in productivity and innovation, eligible businesses that spend a minimum of $5,000 in qualifying PIC investments in the relevant YA will receive a dollar-to-dollar matching cash bonus. The PIC Bonus is capped at $15,000 for the three-year period (YA 2013 to YA 2015) and will be given in addition to the 400% PIC tax deductions of up to $400,000 in expenditure for each PIC qualifying activity or cash payout at 60% on up to $100,000 of the qualifying expenditure.

As announced in the 2014 Budget, the PIC scheme will be extended for three years to YA 2018 to give businesses more time to put in place productivity improvements. For enhanced tax deductions, the expenditure cap of $400,000 of qualifying expenditure per activity can be combined across three YAs from YA 2016 to YA 2018, which would mean a combined expenditure cap of $1.2m per qualifying activity across three YAs.

The 2014 Budget also introduced a PIC+ scheme for small- and medium-sized enterprises (SMEs) that incur PIC qualifying expenditure exceeding the combined cap of $1.2m applicable for the relevant three YAs from YA 2013 to YA 2015 and YA 2016 to YA 2018 respectively. Under the PIC+ scheme, a qualifying SME may enjoy a higher expenditure cap of $600,000 per qualifying activity from YA 2015. This means that a qualifying SME can claim a 400% enhanced tax deduction on an additional $200,000 of qualifying expenditure for any of the six qualifying activities for each YA from YA 2015 to YA 2018. Therefore, the combined cap will be as follows:

- YA 2015 = $400,000 + $400,000 + $600,000 = $1,400,000
- YA 2016 to YA 2018 = $600,000 + $600,000 + $600,000 = $1,800,000.

This enhancement of the PIC scheme for qualifying SMEs will apply to qualifying expenditures incurred during the basis periods for YA 2015 to YA 2018.

The expenditure cap for PIC cash payout will, however, remain at $100,000 across all six qualifying activities per YA.

The following paragraphs set out the relevant activities for the PIC scheme.

Qualifying activities

Under the PIC scheme, significant tax deductions or allowances can be claimed for investments in the following six activities along the innovation value chain:

(a) acquisition or leasing of qualifying IT and automation equipment

(b) acquisition and in-licensing of IP rights

(c) registration of IP rights

(d) R&D activities

(e) training of employees, and

(f) design projects approved by DesignSingapore Council.

Tax incentives

The tax benefits for the six activities are as follows:

(a) Acquisition or leasing of qualifying IT and automation equipment

For acquisition of prescribed IT and automation equipment during the basis period for the relevant YA, a 400% allowance will be granted for the first $400,000 of expenditure incurred on qualifying equipment for each YA. The balance expenditure will be eligible for the existing 100% allowance under s 19A(2) (see ¶8-240). The list of prescribed IT and automation equipment is specified in the Income Tax (Automation Equipment) Rules 2004 and the Income Tax (PIC Automation Equipment) Rules 2012 (from YA 2011).

For deduction of expenditure on leasing of prescribed automation equipment under a qualifying lease, please see ¶8-241 for more details.

The term "automation equipment" is changed to "IT and automation equipment" (as announced in the 2013 Budget) to reflect the fact that the PIC scheme already supports IT-related software besides automation equipment.

(b) Acquisition and in-licensing of IP rights

A 400% allowance will be granted for the first $400,000 of qualifying costs incurred to acquire IP rights incurred for each YA, and a 100% allowance will be granted for the balance expenditure. The taxpayer must own both the legal and economic rights of the IP.

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The 400% tax allowance will cover the acquisition of qualifying IP rights.

Up to YA 2010, a writing-down allowance of 20% under s 19B was granted for capital expenditure incurred for the acquisition of certain IP rights, where the taxpayer owned both the legal and economic rights of the IP.

See ¶8-310 for more details on the above incentive.

The 2013 Budget, the PIC scheme has been enhanced to allow IP in-licensing costs incurred from YA 2013 to YA 2018 to qualify for PIC benefits.

See ¶7-818 for more details on the above incentive.

(c) Registration of IP rights

A 400% tax deduction will be granted for the first $400,000 of qualifying costs for registering patents, trademarks, designs and plant varieties incurred for each YA, and a 100% deduction will be granted for the balance expenditure.

See ¶7-815 for more details on the above incentive.

(d) R&D activities

A 400% tax deduction will be granted for the first $400,000 of qualifying expenditure on R&D undertaken in Singapore or overseas for each YA, and a 150% deduction will be granted for the balance expenditure.

See ¶7-825 for more details on the above incentive.

(e) Design projects approved by DesignSingapore Council

A 400% tax deduction will be granted for the first $400,000 of qualifying expenditure on eligible design work done in Singapore for each YA, and a 100% deduction will be granted for the balance expenditure.

This incentive is administered by the DesignSingapore Council (DSC) (see details of the scheme can be found on the DSC's website at www.designsingapore.org).

See ¶7-835 for more details on the above incentive.

(f) Training

A 400% tax deduction will be granted for the first $400,000 of qualifying training expenditure for external training and Workforce Development Agency (WDA)-certified in-house training incurred for each YA, and a 100% deduction will be granted for the balance expenditure.

See ¶7-830 for more details on the above incentive.

Conversion to cash grant

Businesses that have at least three local employees (ie Singapore citizens and permanent residents with CPF contributions) can elect irrevocably to convert qualifying expenditure on the above six activities under the PIC scheme to a non-taxable cash payout subject to a cap. The cash conversion rate is 30% for YA 2011 and YA 2012, and 60% for YA 2013, YA 2014 and YA 2015. For YA 2011 and YA

2012, the maximum cash payout is $60,000 (30% on the combined expenditure cap of $200,000 for its qualifying activities). For YA 2013 to YA 2018, the maximum cash payout is $60,000 for each YA (60% of the expenditure cap of $100,000 for each YA (but not less than $400) for its qualifying activities). The cash payout cannot be combined on expenditure across YA 2013 to YA 2015 and YA 2016 to YA 2018.

Once an amount of qualifying expenditure is converted into cash, the same amount is no longer available for tax deduction.

For PIC cash payout applications from YA 2016, to reinforce the condition that the cash payout is made to a business with active business operations, the three-local-employees requirement must be met for a consecutive period of at least three months prior to claiming the cash payout.

The above cash payout scheme is legislated under s 37I.

PIC Bonus

As announced in the 2013 Budget, for YA 2013 to YA 2015, businesses that invest in qualifying activities under the PIC scheme may receive a dollar-for-dollar matching cash bonus subject to an overall cap of $15,000 for all three YAs combined.

The PIC Bonus is given on top of the existing 400% tax deductions/allowances and/or 60% cash payout (PIC cash payout) under the PIC scheme. To enjoy the PIC Bonus, businesses must have made a claim for the 400% tax deductions/allowances and/or the PIC cash payout.

To be eligible for the PIC Bonus, businesses must incur at least $5,000 in PIC-qualifying expenditure during the basis period for the YA in which a PIC Bonus is claimed, carry on active business operations in Singapore and have at least three local employees.

The PIC Bonus is taxable.

As announced in the 2015 Budget, since the PIC Bonus had achieved the purpose of helping businesses defray rising operating costs and had successfully encouraged businesses to undertake improvements in productivity and innovation, it will be allowed to lapse after YA 2015.

The PIC+ scheme

The PIC+ scheme enhances the PIC scheme by providing additional support to qualifying SMEs which are making substantial investments to transform their business operations.

A SME, whether in the form of a sole-proprietorship, a partnership or a company, carrying on a trade or business, will be a qualifying SME for the PIC+ scheme if its revenue is not more that $100 million or its employment size is not more than 200 employees. The criterion will be applied at the group level if the SME is part of a group.

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Revenue condition

Revenue refers to income that arises from the ordinary activities of a business. It is the main source of income of that business and excludes income from other sources such as interest. For the purpose of the PIC+ scheme, "revenue" is determined based on the revenue derived during the relevant basis period for the YA. The basis period need not be a 12-month period.

Employment size condition

An employee is an individual who enters into a contract of service with an employer under which the employer will pay him a wage. An employee includes a director of a company and a part-time employee. An individual deployed to work for an entity under a centralised hiring arrangement will be considered as an employee of that entity.

For the purpose of the PIC+ scheme, the employment size is determined as at the last day of the relevant basis period.

Part of a group

A group refers to a parent and its subsidiaries as determined in accordance with Financial Reporting Standard (FRS) 110 (for financial periods before 1 January 2014, in accordance with FRS 27), including entities incorporated/registered outside Singapore. A parent refers to an entity that controls one or more entities while a subsidiary refers to an entity that is controlled by another entity. For example, Company A has more than 50% voting rights in Company B. Assume that Company A has power over Company B and such power is obtained directly and solely from the voting rights granted by equity instruments such as shares. If such power can be assessed by considering the voting rights from those shareholdings, Company A is determined to have control over Company B. Accordingly, Company A is the parent, while Company B would be regarded as a subsidiary.

To determine whether a SME is part of a group, reference is made to the last day of the relevant basis period. Once a SME is determined to be part of a group, the revenue and employment size criteria will be applied at the group level.

Qualifying period for PIC+ scheme

The PIC+ scheme is available from YA 2015 to YA 2018.

Tax incentive under PIC+ scheme

Under the PIC+ scheme, a qualifying SME that incurs PIC qualifying expenditure beyond the current combined expenditure cap of $1.2m per activity for YA 2013 to YA 2015 and for YA 2016 to YA 2018 may enjoy enhanced tax deductions/allowances on an additional $200,000 in expenditure ("additional qualifying expenditure") for each qualifying activity per YA. The expenditure cap for a qualifying SME will increase from $400,000 to $600,000 for each qualifying activity per YA from YA 2015 to YA 2018.

For YA 2015, the combined expenditure cap will be increased to $1.4m if a taxpayer carries on a trade or business in the basis period relating to YA 2015 and is a qualifying SME under the PIC+ scheme. The expenditure cap will be increased from $400,000 to $600,000 per qualifying activity for YA 2015 under the PIC+ scheme.

For YA 2016, YA 2017 and YA 2018, for a qualifying SME under the PIC+ scheme, the combined expenditure cap will be increased to $1.8m for YA 2016 to YA 2018. This is on the basis that under the PIC+ scheme, the expenditure cap for qualifying entities will be increased from $400,000 to $600,000 per qualifying activity for each YA from YA 2016 to YA 2018.

The annual expenditure cap of $600,000 per qualifying activity may be combined as follows:

Table 1: Annual expenditure cap and tax deduction

YA	Expenditure cap per qualifying activity	Tax deduction per qualifying activity
2013 (combined)	$1,200,000	$4,800,000 (400% x $1,200,000)
2014 (Combined)	$1,200,000	$4,800,000 (400% x $1,200,000)
2015 (Combined)	$1,400,000	$5,600,000 (400% x $1,400,000)
2016 to 2018 (Combined)	$1,800,000	$7,200,000 (400% x $1,800,000)

To enjoy the enhanced combined expenditure cap detailed in the above table for YA 2015 to YA 2018, the qualifying SME must carry on a trade or business in the basis period for the relevant YA. Otherwise an annual or adjusted combined expenditure cap will be applied. For example:

- A qualifying SME that commenced its trade or business in 2013 (ie basis period relating to YA 2014) will enjoy a combined expenditure cap per qualifying activity of:
  - $1m for YA 2014 and YA 2015 ($400,000 for YA 2014 + $600,000 for YA 2015)
  - $1.8m for YA 2016 to YA 2018 ($600,000 for each YA for YA 2016 to YA 2018).
- A qualifying SME that ceased its trade or business during the year 2016 (ie basis period relating to YA 2017) will enjoy a combined expenditure cap per qualifying activity of:
  - $1.4m for YA 2013 to YA 2015 ($400,000 for YA 2013 + $400,000 for YA 2014 + $600,000 for YA 2015)
  - $1.2m for YA 2016 and YA 2017 ($600,000 for YA 2016 and $600,000 for YA 2017).

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SPECIAL AND FURTHER/ENHANCED DEDUCTIONS

¶7-810 Overview

The following tax incentives are provided for in the Act and the provisions contain detailed conditions for eligibility:

- *Special deductions* for the following expenditures not deductible under s 14 or prohibited by s 15:
  - Costs of protecting IP (s 14A).
  - Expenditure on R&D (s 14D).
  - Management expenses of investment companies (s 14F).
  - Expenditure on building modifications for the benefit of disabled employees (s 14H).
  - Provisions by banks and qualifying finance companies for doubtful debts and diminution in the value of investments (s 14I).
  - Overseas investment development expenditure (s 14K).
  - Hotel refurbishment expenditure (s 14M).
  - Deduction for upfront land premium (s 14N).
  - Deduction for special reserve of approved general insurer (s 14O).
  - Deduction for treasury shares transferred under the employee equity-based remuneration scheme (s 14P).
  - Deduction for renovation or refurbishment expenses (s 14Q).
  - Qualifying design expenditure (s 14S).
- *Further deductions* of 100% or 150% for the following expenditures that are deductible under s 14 or as special deductions:
  - IP registration costs (s 14A).
  - Expenses relating to approved trade fairs, exhibitions or trade missions or relating to the maintenance of an overseas trade office (s 14B).
  - Logistics expenses (s 14C).
  - Expenditure on R&D (s 14DA and 14E).
  - Expenditure on R&D in respect of new financial activities (s 14J (repealed)).
  - Overseas investment development expenditure (s 14K).
  - Expenses incurred in the relocation or recruitment of overseas talent (s 14L).
  - Hotel refurbishment expenditure (s 14M).
  - Qualifying training expenditure (s 14R).
  - Qualifying design expenditure (s 14S).
  - Expenditure on leasing of prescribed automation equipment under a qualifying lease (s 14T).
  - Qualifying in-licensing IP costs (s 14W).

¶7-815 Costs of protecting IP

IP registration costs

The special 100% deduction for qualifying IP registration costs (IPRCs) accorded under s 14A(1), which would have lapsed in YA 2015, has been extended for five years to YA 2020 as announced in the 2014 Budget. The enhanced deduction of 300% for qualifying IPRCs under the PIC scheme for the five-year period from YA 2011 to YA 2015 has been also extended for three years to YA 2018.

IPRCs being costs incurred to protect a person's IP rights are expenditure of a capital nature and are therefore not deductible. A person carrying on a trade or business is allowed to claim special deduction for the qualifying IPRCs incurred during the basis period for the relevant ten YAs (s 14A(1A)). The IPRCs must be incurred for the purposes of that trade or business. In addition, that person is allowed, in respect of all his trades and businesses, to claim a further deduction of 300% of the lower of the qualifying IPRCs incurred for the purposes of those trades and businesses during the relevant basis period and $400,000 (s 14A(1A)). This means that a person can claim a 400% deduction on the first $400,000 of the qualifying IPRCs and a 100% deduction on the balance expenditure.

The combined expenditure cap is $800,000 for YA 2011 and YA 2012, $1.2m for YA 2013 to YA 2015, and $1.2m for YA 2016 to YA 2018.

Where the amount of qualifying IPRCs incurred by a person during the basis period for YA 2011 exceeds $400,000, that person is allowed to claim 300% deduction for that YA based on the lower of the IPRCs incurred and $800,000. For YA 2012, the amount of the 300% deduction claimable by that person is the lower of:

(i) the qualifying IPRCs incurred during the basis period for YA 2012, and

(ii) the balance, if any, after deducting from $800,000 the amounts of eligible IPRCs in YA 2011 (s 14A(1B)).

For both YA 2011 and YA 2012, the person can claim 100% deduction for the IPRCs incurred in the relevant basis years.

The application of the above rules is illustrated in Example 9.

Example 9

Assume Company PQR incurred the following different amounts of qualifying IPRCs during the basis periods for YA 2011 and YA 2012:

Case	A	B	C
YA 2011	$300,000	$550,000	$850,000
YA 2012	$650,000	$400,000	$100,000
Total	$950,000	$950,000	$950,000

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The amount of deductions claimable under s 14A for the relevant YAs is as follows:

	A	B	C
	$	$	$
YA 2011			
Special deduction	300,000	550,000	850,000
Further deduction of 300%			
– 300% × $300,000	900,000		
– 300% × $550,000		1,650,000	
– 300% × $800,000			2,400,000
Total deductions	1,200,000	2,200,000	3,250,000
YA 2012			
Special deduction	650,000	400,000	100,000
Further deduction of 300%			
– 300% × $500,000	1,500,000		
– 300% × $250,000		750,000	
Total deductions	2,150,000	1,150,000	100,000
Total deductions for both years	3,350,000	3,350,000	3,350,000

Example 10

Assume Company PQR incurred the following different amounts of qualifying IPRCs during the basis periods for YA 2013, YA 2014 and YA 2015:

Case	A	B	C
YA 2013	$300,000	$550,000	$850,000
YA 2014	$650,000	$400,000	$100,000
YA 2015	$1,000,000	$1,000,000	$1,000,000
Total	$1,950,000	$1,950,000	$1,950,000

Chapter 7

The amount of deductions claimable under s 14A for the relevant YAs is as follows:

	A	B	C
	$	$	$
YA 2013			
Special deduction	300,000	550,000	850,000
Further deduction of 300%			
– 300% × $300,000	900,000		
– 300% × $550,000		1,650,000	
– 300% × $850,000			2,550,000
Total deductions	1,200,000	2,200,000	3,400,000

	A	B	C
	$	$	$
YA 2014			
Special deduction	650,000	400,000	100,000
Further deduction of 300%			
– 300% × $650,000	1,950,000		
– 300% × $400,000		1,200,000	
– 300% × $100,000			$300,000
Total deductions	2,600,000	1,600,000	400,000
YA 2015			
Special deduction	1,000,000	1,000,000	1,000,000
Further deduction of 300%			
– 300% × $(1,200,000 – 300,000 – 650,000)	750,000		
– 300% × $(1,200,000 – 550,000 – 400,000)		750,000	
– 300% × $(1,200,000 – 850,000 – 100,000)			750,000
Total deductions	1,750,000	1,750,000	1,750,000
Total deductions for all three years	5,550,000	5,550,000	5,550,000

Example 11

Assume the same Company PQR incurred the following different amounts of qualifying IPRCs during the basis periods for YA 2016, YA 2017 and YA 2018:

Case	A	B	C
YA 2016	$300,000	$550,000	$850,000
YA 2017	$650,000	$400,000	$100,000
YA 2018	$1,000,000	$1,000,000	$1,000,000
Total	$1,950,000	$1,950,000	$1,950,000

The amount of deductions claimable under s 14A for the relevant YAs is computed in a similar manner as YA 2013, YA 2014 and YA 2015 in Example 10.

Note that the person is required to give an undertaking that he would be the proprietor of the patent or registered trademark, the registered owner of the registered design or the grantee of the plant variety, as the case may be, when the patent is granted, the trademark or design is registered or the plant variety is granted protection (s 14A(2)).

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A qualifying intellectual property right (IPR) has been defined to mean the right to do or authorise the doing of anything which would, but for that right, be an infringement of any patent, registered trademark or design, or grant of protection of a plant variety.

Qualifying IPRCs are fees paid to:

(a) the Registry of Patents, Registry of Trade Marks, Registry of Designs or Registry of Plant Varieties in Singapore or an equivalent registry outside Singapore for the:

 (i) filing of an application for a patent, registration of a trademark or design, or grant of protection of a plant variety

 (ii) search and examination report on the application for a patent

 (iii) examination report on the application for grant of protection of a plant variety, or

 (iv) grant of a patent, and

(b) an agent for:

 (i) applying for any patent, registration of a trademark or design, or grant of protection of a plant variety, in Singapore or elsewhere

 (ii) preparing the specifications or other documents for the purposes of the relevant Acts or IP law of any other country relating to patents, trademarks, designs or plant varieties, or

 (iii) giving advice on the validity or infringement of any patent, registered trademark, registered design or grant of protection of a plant variety.

Note that qualifying IPRCs would not include any expenditure subsidised by grants or subsidies from the Government or a statutory board.

Chapter 7

Cash payouts — option to convert deduction into cash

Under the PIC scheme, a person can convert qualifying deductions of IPRCs into cash (s 37I(1)). More details on the cash payout scheme can be found in ¶7-750.

Sale, transfer or assignment of IPRs

There are claw-back provisions where the person sells, transfers or assigns all or any part of the qualifying IPRs or the application for the registration or grant of the qualifying IPRs for which such costs were incurred, within a period of one year from the date of filing of the application.

Where the IPR was disposed of within one year and the 300% deduction had been claimed for the qualifying IPRCs, the full 300% deduction allowed would be deemed as income of the person for the YA relating to the basis period in which the sale, transfer or assignment occurs (s 14A(5A)). Where the 300% deduction had been converted into cash under the cash payout scheme, the person must inform the IRAS within 30 days of the occurrence of such an event as the cash payout would be recoverable by the IRAS (s 37I(10)). Penalties may be imposed if the notification requirement is not complied with.

Regardless of when the IPR was disposed of and special deduction had been claimed, the lower of the sale price of the IPR or the special deduction previously granted would be deemed as income in the year of disposal (s 14A(4)). Where the special deduction has been converted to a cash payout, the IRAS would recover the amount of payout from the person concerned only if the IPR was disposed of within one year (s 37I(10)). There is no recovery of the cash payout where the disposal was made after one year. The following table summarises the above tax position:

Table 2: Deductions relating to IPRs

	Deductions claimed for qualifying IPRCs		***Qualifying deductions converted into cash***	
Qualifying deductions	***IPR disposed of within 1 year***	***IPR disposed of after 1 year***	***IPR disposed of within 1 year***	***IPR disposed of after 1 year***
300% deduction	Deemed as income chargeable to tax in the year of disposal	No claw-back of 300% deduction	Recovery of cash payout	No recovery of cash payout
Special provision	Lower of sale price of the IPR or special deduction granted previously is deemed as income in the year of disposal		Recovery of cash payout	No recovery of cash payout

Partnerships and individuals carrying on more than one trade or business

Where a partnership carrying on a trade or business has incurred qualifying IPRCs during the basis period for the relevant YAs, the aggregate of the deductions allowed to all the partners of the partnership for those costs in respect of all the trades and businesses of the partnership cannot exceed 300% of the lower of the IPRCs or $400,000 (s 14A(1F)).

Similarly, where an individual carrying on a trade or business through two or more firms (excluding partnerships) has incurred qualifying IPRCs during the basis period for any relevant YA in respect of such firms for the purposes of the individual's trade or business, the amount of 300% deduction allowed to the individual for those costs in respect of all his trades and businesses cannot exceed 300% of the lower of the IPRCs or $400,000 (s 14A(1E)).

For YA 2011 and YA 2012, the 300% deduction claimable by such partnership and individual is limited to the available relevant amounts.

Deduction for patenting costs

The following paragraphs apply to qualifying patent costs incurred during the period 1 June 2003 to the last day of the basis period for YA 2010. To encourage more companies to patent their inventions and to make Singapore an attractive base for IP management, special deduction was granted for qualifying patent costs (s 14A).

Any person carrying on a trade or business can claim special deduction for qualifying patenting costs incurred during the period 1 June 2003 to the last day of the basis period for YA 2010.

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Qualifying patenting costs are fees paid to:

(a) the Registry of Patents in Singapore or an equivalent registry outside Singapore for the filing of a patent, the search and examination report on the application for a patent, or the grant of a patent, and

(b) any registered patent agent for applying for any patent in Singapore or an equivalent registry outside Singapore for the filing of a patent, preparing specifications or other documents for the purposes of the *Patents Act (Cap 221, 2005 Revised Ed)* or patents law of another country, or giving advice (other than advice of a scientific or technical nature) about the validity or infringement of the patent.

A qualifying person must give an undertaking that he would be the proprietor of the patent when the patent is granted and would make a claim in such manner and subject to such conditions as the Comptroller may require.

There are claw-back provisions. Where any person who has been allowed a deduction for patenting costs:

(a) sells, transfers or assigns all or any part of the rights for which the patenting costs were incurred, the person is deemed to have derived income equal to the price for which the rights were sold, transferred or assigned, or the deduction allowed, whichever is the lower, or

(b) fails to obtain a patent in any country, the person is deemed to have derived income equal to the deduction allowed in respect of the patenting costs incurred for that country under this section.

¶7-818 IP in-licensing costs

The PIC scheme was enhanced to allow deduction of IP in-licensing costs incurred from YA 2013 to YA 2015 for qualifying IP rights in the 2013 Budget and the scheme was extended for three years to YA 2018 in the 2014 Budget.

Businesses, especially SMEs, may license IP rights rather than acquire the IPs to innovate or improve productivity. Allowing the deduction of IP in-licensing costs for qualifying IP rights will assist SMEs to source for IPs to develop and grow their businesses.

A person carrying on a trade or business is allowed to claim enhanced deduction for qualifying IP in-licensing costs incurred during the basis period for the relevant YAs (s 14W(1)). The qualifying IP in-licensing costs must be incurred for the purposes of that trade or business. In addition, that person is allowed, in respect of all his trades and businesses, to claim a further deduction of 300% of the lower of the qualifying IP in-licensing costs incurred for the purposes of those trades and businesses during the relevant basis period and $400,000 (s 14A(1)). This means that a person can claim a 400% deduction on the first $400,000 of the qualifying IP in-licensing costs and a 100% deduction on the balance expenditure.

The combined expenditure cap for YA 2013, YA 2014 and YA 2015 is $1.2m if a taxpayer carries on a trade or business in a basis period relating to each qualifying YA. For example, if a company ceases to carry on any business in 2014 (ie the basis period relating to YA 2015), the combined expenditure cap will be applicable only for YA 2013 and YA 2014, and the amount is $800,000. The application of the above rules is illustrated in Example 12.

Example 12

Assume Company PQR incurred the following different amounts of qualifying IP in-licensing costs during the basis periods for YA 2013, YA 2014 and YA 2015:

Case	A	B	C
YA 2013	$300,000	$550,000	$850,000
YA 2014	$650,000	$400,000	$100,000
YA 2015	$1,000,000	$1,000,000	$1,000,000
Total	$1,950,000	$1,950,000	$1,950,000

The amount of deductions claimable under s 14W for the relevant YAs is as follows:

	A $	B $	C $
YA 2013			
Normal deduction	300,000	550,000	850,000
Enhanced deduction of 300%			
300% × $300,000	900,000		
300% × $550,000		1,650,000	
300% × $850,000			2,550,000
Total deductions	1,200,000	2,200,000	3,400,000
YA 2014			
Normal deduction	650,000	400,000	100,000
Enhanced deduction of 300%			
300% × $650,000	1,950,000		
300% × $400,000		1,200,000	
300% × $100,000			300,000
Total deductions	2,600,000	1,600,000	400,000
YA 2015			
Normal deduction	1,000,000	1,000,000	1,000,000
Enhanced deduction of 300%			
300% × $(1,200,000 – 300,000 – 650,000)	750,000		
300% × $(1,200,000 – 550,000 – 400,000)		750,000	
300% × $(1,200,000 – 850,000 – 100,000)			750,000
Total deductions	1,750,000	1,750,000	1,750,000
Total deductions for all three years	5,550,000	5,550,000	5,550,000

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A qualifying IP right for the purposes of the IP in-licensing costs refers to an IP right as defined in s 19B(11) but excludes trademarks and any right to the use of software. An IP right is defined in s 19B(11) to mean the right to do or authorise the doing of anything which would, but for that right, be an infringement of any of the following:

- patents
- copyrights
- trademarks
- registered designs
- geographical indications
- layout designs of integrated circuits
- trade secrets
- information that has commercial value, or
- the grant of protection of a plant variety (s 14W(8)).

In the expressions "trade secret" and "information that has commercial value" and any work or subject-matter to which the expression "copyright" relates in the definition of IP rights, the following are excluded:

(a) information of customers of a trade or business eg a list of customers and requirements of those customers gathered in the course of the carrying on of that trade or business

(b) information on work processes (eg standard operating procedures) other than industrial information or technique that is likely to assist in the manufacture or processing of goods and materials, and

(c) compilation of any information as described in para (a) or (b) above.

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The above list is not an exhaustive exclusion list. The Minister may, by regulations, prescribe other matters to be included in the exclusion list in relation to the definition of IP rights.

Qualifying IP in-licensing costs refer to licence fees and exclude expenditure for the transfer of ownership of any qualifying IP right, legal fees and other costs related to the licensing of any qualifying IP right (s 14W(10)).

Note that the qualifying IP in-licensing costs must be deductible under s 14 or s 14D before the person is entitled to claim the 300% enhanced deduction. The enhanced deduction will not be granted if the qualifying IP right is licensed from a related party carrying on a trade or business in Singapore and the qualifying IP right is acquired or developed (in whole or in part) by the related party during the basis period relating to YA 2011 or any subsequent YA or if CA has been previously claimed under s 19B in respect of the qualifying IP right (s 14W(6)).

Cash payouts — option to convert deduction into cash

Under the PIC scheme, a person can convert deductions of qualifying IP in-licensing costs into cash (s 37I(1)). More details on the cash payout scheme can be found in ¶7-750.

Partnerships and individuals carrying on more than one trade or business

Where a partnership carrying on a trade or business has incurred qualifying IP in-licensing costs during the basis period for the relevant YAs, the aggregate of the deductions allowed to all the partners of the partnership for those costs in respect of all the trades and businesses of the partnership cannot exceed 300% of the lower of the qualifying IP in-licensing costs or $400,000 (s 14W(5)).

Similarly, where an individual carrying on a trade or business through two or more firms (excluding partnerships) has incurred qualifying IP in-licensing costs during the basis period for any relevant YA in respect of such firms for the purposes of the individual's trade or business, the amount of 300% deduction allowed to the individual for those costs in respect of all his trades and businesses cannot exceed 300% of the lower of the qualifying IP in-licensing costs or $400,000 (s 14W(4)).

¶7-820 Export promotion and market development expenditure

Under s 14B, a further deduction in addition to the deduction allowed under s 14 is allowed for expenses incurred in relation to:

- establishing, maintaining or participating in an approved trade fair, trade exhibition, trade mission or trade promotion activity
- maintaining an approved overseas trade office, or
- market development expenditure for the carrying out of any approved marketing project (s 14B(2)).

To qualify for the further deduction, the taxpayer must be an approved company or firm that has incurred the expenses for the primary purpose of:

- promoting the trading of goods or the provision of services, or
- providing services in connection with the use of any right under a master franchise or master IP licence where the company or firm is the holder of the franchise or licence (s 14B(1)).

The Minister may specify the maximum amount of expenses to be allowed a further deduction.

Only those expenses that qualify for deduction under s 14 will qualify for a further deduction (s 14B(4)(a)). However, in the case of an approved trade fair, trade exhibition, trade mission, trade promotion activity or marketing project, further deduction for the travelling, accommodation and subsistence expenses or allowances is available only for an approved number of employees (s 14B(4)(b)).

Section 14B is administered by IE Singapore (formerly Trade Development Board). From 1 April 2004, applications for further deduction for local trade fairs are processed by the Singapore Tourism Board. No approval will be granted after 31 March 2016.

As announced in the 2015 Budget, the further deduction for qualifying expenditure incurred on a range of qualifying market expansion and investment activities will be enhanced to include qualifying manpower expenses incurred for Singapore citizens

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posted to new overseas entities. The amount of qualifying manpower expenses to be allowed a further deduction will be capped at $1m per approved entity per year, subject to conditions. This change will apply to qualifying manpower expenses incurred from 1 July 2015 to 31 March 2020. Applications for further deduction of qualifying manpower expenses will be processed by IE Singapore.

IE Singapore will release further details by May 2015.

Overseas trade office expenses

The period of eligibility for further deduction is subject to approval and will run from the date of establishment of the approved overseas trade office for an approved number of years. The following expenses do not qualify for further deduction:

- expenses for establishing the overseas trade office
- remuneration, travelling, accommodation and subsistence expenses or allowances for more than the approved number of employees of the overseas trade office, and
- any expenses that are specifically excluded as a condition for approval (s 14B(4)(c)).

If the approved company or firm setting up an overseas trade office has a permanent establishment (PE) in the foreign country where the approved overseas trade office is to be established and it is found to be carrying on business in that country through the PE and is taxable there, it will be disqualified from claiming further deduction (s 14B(4)(c)(v)).

Marketing project expenses

Further deduction available in respect of market development expenditure refers to the following:

- approved expenses directly attributable to the carrying out of market research or obtaining of market information, including any feasibility study
- expenses for advertisements placed in approved media
- expenses incurred in approved promotion campaigns, or
- approved expenses incurred in the design of packaging or in the certification of goods or services where such certification is carried out by an approved person (s 14B(11)).

Deduction under s 14B for eligible expenses incurred for qualifying market development activities has been merged with deduction for eligible expenses incurred for qualifying investment development activities under s 14K. The changes apply only to applications submitted and approved on or after 1 April 2011.

¶7-825 Research and development expenditure

Definition

From YA 2009, the term "research and development" (R&D) has been defined in s 2(1) as:

"any systematic, investigative and experimental study that involves novelty or technical risk carried out in the field of science or technology with the object of acquiring new knowledge or using the results of the study for the production or improvement of materials, devices, products, produce, or processes, but does not include—

- quality control or routine testing of materials, devices or products;
- research in the social sciences or the humanities;
- routine data collection;
- efficiency surveys or management studies;
- market research or sales promotion;
- routine modifications or changes to materials, devices, products, processes or production methods;
- cosmetic modifications or stylistic changes to materials, devices, products, processes or production methods; or
- development of a computer software that is not intended to be sold, rented, leased, licensed or hired to 2 or more persons who are not related parties . . . to each other, and to the person who develops the software or on whose behalf the development of the software is undertaken."

From YA 2012, the development of a computer software that is not intended to be sold, rented, leased, licensed or hired was deleted from the definition of the term "research and development".

Up to YA 2008, the term "research and development" was defined as any systematic or intensive study carried out in the field of science or technology, the results of which are to be used for the production or improvement of materials, devices, products, produce and processes. Quality control, routine product testing, research in the social sciences or the humanities, routine data collection, efficiency surveys, management studies and market R&D services were specifically excluded from the definition.

Deduction for qualifying R&D expenditure

The deduction for qualifying R&D expenditure is given under one or more of the following sections:

- normal deduction under s 14 for expenditure incurred wholly and exclusively in the production of income
- special deduction under s 14D for expenditure of a capital nature
- further deduction of 100% of the qualifying expenditure incurred for an approved project under s 14E, or
- enhanced deduction of 50% or 300% under s 14DA.

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The deduction for R&D expenditure under the PIC scheme (see ¶7-750) can be summarised as follows:

- 400% (ie 100% base plus 300% enhanced) tax deduction for the first $400,000 of qualifying expenditure on R&D done in Singapore or overseas in the basis period of the relevant YA
- 150% (ie 100% base plus 50% enhanced) tax deduction for the balance expenditure for R&D done in Singapore
- 100% tax deduction for the balance of all other R&D expenses.

The PIC incentive is available to all businesses from YA 2011 to YA 2018.

Note that the R&D Tax Allowance (RDA) scheme and the R&D Incentive for Start-Up Enterprise (RISE) scheme, discussed in subsequent paragraphs, have been phased out.

Special deductions under s 14D

Section 14D provides for the deduction of R&D expenditure of a capital nature incurred by any qualifying taxpayer carrying on any trade or business. The R&D activity may be undertaken directly by the taxpayer or by an R&D organisation on the taxpayer's behalf.

The s 14D deduction can also be claimed for the following expenditures:

- expenditure incurred during the basis period for any YA between YA 2009 and YA 2025 for R&D undertaken in Singapore directly by the taxpayer and not related to his trade or business (s 14D(1)(aa)), and
- payments made during the basis period for any YA between YA 2009 and YA 2025 to an R&D organisation for undertaking on behalf of the taxpayer in Singapore R&D not related to the taxpayer's trade or business (s 14D(1)(c)).

Where the R&D activity is undertaken by an R&D organisation outside Singapore on behalf of a taxpayer, the taxpayer can claim deduction only if: Chapter 7

- the taxpayer gives an undertaking that any benefit which may arise from the R&D activity shall accrue to him, and
- the taxpayer's claim is made in such manner and subject to such conditions as the Comptroller may require (s 14D(3)).

Deduction cannot be claimed under s 14D for capital expenditure incurred:

- on plant, machinery, land or buildings (including alterations, additions or extensions to the buildings), and
- in the acquisition of rights in or arising out of the R&D activity.

Expenses incurred before the commencement of the taxpayer's trade or business are deductible as they are deemed to have been incurred on the first day the trade or business is carried out (s 14D(2)).

Effective from YA 2011, where any of the above R&D expenditure or payments to an R&D organisation are subsidised by grants or subsidies from the Government or a statutory board, such expenditure or payments would not qualify for deduction (s 14D(1A)). Furthermore, qualifying expenditure or payments would not include any amounts in respect of which an election has been made under s 37I for a cash payout under the PIC scheme.

Enhanced deduction under s 14DA

Section 14DA provides for two different types of enhanced deduction: a 300% deduction under the PIC scheme and a separate 50% deduction.

Under the PIC scheme, a person can claim enhanced deduction of 300% on the lower of $400,000 and the qualifying expenditure incurred during the basis period for any YA between YA 2011 and YA 2015 (s 14DA(2)). Note that a combined expenditure cap of $800,000 applies to YA 2011 and YA 2012 (s 14DA(4)(a) and 14DA(4)(b)), and a combined cap of $1,200,000 applies to YA 2013 to YA 2015 (s 14DA(4)(c), 14DA(4)(d) and 14DA(4)(e)). As announced in the 2014 Budget, the enhanced deduction of 300% for qualifying expenditure up to $400,000 under the PIC scheme will be extended for three years to YA 2018. This 300% deduction is given in addition to the s 14D special deduction and the s 14DA(1) enhanced deduction discussed in the following paragraph.

From YA 2009 to YA 2025, a person carrying on any trade or business is eligible to claim an enhanced deduction (in addition to special deduction provided for under s 14D) on the following qualifying expenditure net of any grants or subsidies from the Government or a statutory board incurred during the relevant basis periods (s 14DA(1)):

- 50% of the expenditure on staff costs and consumables incurred on R&D undertaken directly by the taxpayer, and
- a specified percentage of all payments made to an R&D organisation for undertaking R&D for the taxpayer in Singapore.

The rules regarding the amount of R&D deductions under the PIC scheme by partnerships and individuals other than partnership carrying on more than one trade or business are similar to those for IPRCs (refer to ¶7-815).

A person can elect to convert the qualifying deductions under the PIC scheme into cash (see ¶7-750 and s 37I(1)).

Further deduction under s 14E

From YA 2009, a further deduction of 100% is allowed to the following qualifying taxpayers (s 14E):

- a person carrying on any trade or business who either undertakes the projects himself or pays an R&D organisation to undertake an approved project that is related to the person's trade or business
- a person carrying on any trade or business who either undertakes the projects himself or pays an R&D organisation to undertake an approved project that is unrelated to that person's trade or business during the basis period for any YA between YA 2009 to YA 2020 (both years inclusive), or
- an R&D organisation undertaking approved projects.

As announced in the 2014 Budget, no approval will be granted for any R&D project after 31 March 2020.

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Further deduction would not be granted for any R&D expenditure that qualifies for 300% enhanced deduction under the PIC scheme (s 14E(3AA)).

Where there is insufficient income in the current year to offset the further deduction, the unabsorbed further deduction is eligible for transfer to a member company under the group relief scheme (s 14B(6)), or it can be carried forward for set-off against chargeable income in the first subsequent YA (s 14B(7)).

Note that only one person can claim further deduction for the expenditure incurred on a project or on another project of which the first project forms a part. Hence, where an R&D organisation undertakes an approved project for and on behalf of a person, either person (but not both) can claim further deduction in respect of the expenditure incurred.

The Economic Development Board (EDB) administers this scheme and the criteria for determining the eligibility for companies applying for the further deduction include:

- the level of sophistication of the R&D report
- the level of expertise and qualifications of the researchers, and
- the level of R&D activities measured in terms of R&D expenses.

R&D of new financial activities (s 14J (repealed))

This incentive is no longer available from 1 January 2010. It was provided in the old s 14J(5A) that no approval or extension of approval will be granted on or after 1 January 2010.

Section 14J (repealed) allowed a financial institution to further deduct, in addition to a s 14 deduction, the following expenses incurred:

- salary, wages and other employment benefits (except directors' fees) paid or granted to an approved employee who was engaged in researching and developing any approved new financial activity
- legal expenses (excluding litigation expenses) directly attributable to the research or development of an approved new financial activity, and
- expenses incurred on an approved training course conducted in Singapore by an approved employee (s 14J(1)(a)–14J(1)(c) (repealed)).

A further deduction may be allowed for fees or other benefits paid under a contract for financial consultancy services. To qualify, the fees or benefits must have been paid to an approved consultant engaged in researching and developing an approved new financial activity under a contract extending over at least six months. The further deduction will not be granted if the consultant is absent from Singapore for more than a total of 30 days during the contract (s 14J(1)(d) (repealed)).

A "new financial activity" is a new or innovative financial activity or instrument falling within one of the following categories:

- derivatives trading, including share options, currency options and interest rate options
- swap transactions, excluding plain vanilla swaps

- technical trading computer systems and software
- risk management services which employ sophisticated hedging techniques and instruments
- development of synthetic securities and instruments linked to derivatives, or
- research on foreign securities (s 14J(6) (repealed)).

Additional categories of activities or instruments may also be prescribed.

To qualify for further deduction, the relevant expenses must qualify for deduction under s 14. The maximum amount of further deduction allowed was capped at 30% of the financial institution's statutory income before the further deduction. The amount in excess of this limit could not be carried forward for deduction in future years (s 14J(2), 14J(3) and 14J(5) (repealed)).

A financial institution may be a bank, merchant bank, securities dealer, investment adviser or futures broker approved by the Minister. The Minister may grant approval for up to five years and extend approval for further periods not exceeding five years on each occasion (s 14J(4) and 14J(6) (repealed)).

R&D Tax Allowance (RDA) scheme

With the introduction of the PIC scheme, the RDA scheme provided for under s 37G "Deduction for incremental expenditure on research and development" will be phased out. From YA 2011, no RDA will be granted. RDA of up to $150,000 granted for YA 2009 and/or YA 2010 are credited to an R&D account.

For any YA between YA 2010 and YA 2016, where the company has incurred incremental qualifying R&D expenditure during that basis period and the company has assessable income for that YA, and the R&D account is in credit, the amount of deduction allowed against the company's assessable income is the lowest of (s 37G(5)):

(a) the incremental qualifying R&D expenditure incurred during the basis period

(b) the amount of credit standing in the R&D account as at the first day of the basis period, and

(c) the assessable income for that YA.

Taxpayers with unutilised RDA granted for YA 2009 and/or YA 2010 have up to YA 2016 to claim a deduction of those RDA against their assessable income. Note that no deduction would be allowed for RDA if, in any YA from YA 2011 to YA 2015, a company has claimed, under the PIC scheme, enhanced deduction for the first $300,000 of the qualifying R&D expenditure incurred during the relevant basis period (s 37G(9A)).

Details on the above scheme can be found in the IRAS e-Tax Guide "Research and Development Tax Measures", revised on 12 December 2008.

R&D Incentive for Start-up Enterprises (RISE) scheme

The RISE scheme expired at the end of YA 2010 following the enhancement of the tax incentives for R&D under the PIC scheme (see ¶7-750).

The following paragraphs discuss the tax rules applicable up to YA 2010 with regard to the RISE scheme.

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Section 37H "Cash grant for research and development expenditure for start-up company" came into effect from YA 2009. The scheme essentially provides cash flow assistance to start-up companies that suffer losses in their first three YAs since incorporation. Being in a loss position, such companies cannot avail themselves of the RDA scheme.

A qualifying start-up company must be a Singapore-incorporated company and a tax resident in Singapore. One of its first three YAs must fall within the period of YA 2009 to YA 2010 (both years inclusive). Furthermore, its total share capital must be beneficially held throughout the basis period for the YA of claim, directly by no more than 20 persons:

(a) all of whom are individuals, or

(b) of which at least one is an individual shareholder holding at least 10% of the total number of issued ordinary shares (s 37H(14)).

This incentive is available for any of its first three YAs falling between YA 2009 and YA 2010 (both years inclusive). A qualifying start-up company can apply to the Comptroller for a cash grant where the company has satisfied the following conditions (s 37H(1)):

(a) has incurred at least $150,000 of the qualifying R&D expenditure in the basis period relating to that YA

(b) has incurred tax adjusted loss in that basis period, and

(c) has carried on R&D in Singapore at the time of application for the cash grant.

For each relevant YA, a qualifying start-up company can claim a specified amount of cash grant of up to $20,250 from the Government. The specified amount of cash grant is based on the following formula (s 37H(3)):

9% of A where:

For a company that has not commenced business	***For a company that has commenced business***
A is the lower of: (a) $225,000, and (b) the qualifying R&D expenditure incurred in the relevant basis period and enhanced deductions under s 14DA.	A is the lowest of: (a) $225,000 (b) the qualifying R&D expenditure incurred in the relevant basis period and enhanced deductions under s 14DA, and (c) the tax adjusted loss for the relevant basis period.

Note that the Comptroller is empowered to recover any cash grants paid out where the amount has been paid even though the company has not satisfied the requirements for the grant, or the amount paid is in excess of what may be given (s 37H(8)).

¶7-830 Qualifying training expenditure

Under the PIC scheme, a person carrying on any trade or business during the basis period for any YA between YA 2011 and YA 2018 (both years inclusive) is allowed in respect of all his trades and businesses to claim, in addition to a deduction under s 14, a further deduction of 300% of the lower of the qualifying training expenditure incurred for the purposes of those trades and businesses during the basis period and $400,000 (s 14R(1)). The 300% deduction would not be allowed if the qualifying training expenditure does not qualify for deduction under s 14 (s 14R(3)).

Note that the combined expenditure cap is $800,000 for YA 2011 and YA 2012, $1.2m for YA 2013 to YA 2015, and $1.2m for YA 2016 to YA 2018.

Where the amount of qualifying training expenditure incurred by a person during the basis period for YA 2011 exceeds $400,000, that person is allowed to claim the 300% deduction for YA 2011 based on the lower of the training expenditure incurred and $800,000. For the following YA (YA 2012), the amount of the 300% deduction claimable by that person would be the lower of:

(i) the qualifying training expenditure incurred during the basis period for YA 2012, and

(ii) the balance, if any, after deducting from $800,000 the amount of eligible training expenditure for YA 2011 (s 14R(1)).

For both YA 2011 and YA 2012, the person can claim a 100% deduction on the amount of qualifying training expenditure incurred.

Qualifying training expenditure for the 300% deduction is (s 14R(6)):

(a) training expenditure incurred directly in providing the following courses for employees:

   (i) an accredited Workforce Skills Qualification (WSQ) training course by a WSQ in-house training provider

   (ii) an approved course by the Institute of Technical Education (ITE), or

   (iii) on-the-job training by a certified on-the-job training centre.

   The above training expenditure would include any salary and other remuneration paid to in-house trainers for conducting the above courses and training (based on the hours spent in conducting the courses and training). However, salaries and other remuneration of any employee attending or providing administrative support to the courses and training, and imputed overheads such as rental and cost of utilities, do not qualify for the 300% deduction.

(b) course fees for employees paid (whether directly or in the form of reimbursement) to an external training provider, including registration or enrolment fees, examination fees, tuition fees and aptitude test fees, and

(c) rental of training facilities for any course or training referred to in para (a) or (b), expenditure for meals and refreshments provided during any such course or training, and expenditure for training material and stationery used for any such course or training.

However, qualifying training expenditure does not include any accommodation, travelling or transportation expenditure incurred in respect of employees attending or conducting the course or training, or any expenditure to the extent that it is subsidised by grants or subsidies from the Government or a statutory board.

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Businesses that incurred training expenses on individuals deployed to their organisations under centralised hiring arrangements or secondment arrangements would not qualify for the PIC scheme because the businesses are not the legal employers of such individuals. In a centralised hiring arrangement, the hiring function of a group of companies is centralised in a single entity with the staff costs (including training expenses) allocated to the respective entities. In a secondment arrangement, an employee of a business is seconded to work for a related entity. Once seconded, the staff costs are fully recharged to the related entity. As announced in the 2014 Budget, with effect from YA 2014, the PIC scheme is enhanced to allow businesses to claim qualifying training expenditure incurred in respect of individuals hired under centralised hiring arrangements or seconded from a related entity under secondment arrangements subject to the following conditions:

(a) the PIC claimant (Business B) claiming for qualifying training expenditure incurred under the PIC scheme is able to produce supporting documents on the recharging of employment costs by the related entity (Business A) in respect of employees working solely in the PIC claimant entity (ie Business B)

(b) the corporate structure and centralised hiring practices are adopted for *bona fide* commercial reasons, and

(c) the related entity (Business A) does not claim deductions on the training expenses recharged to the PIC claimant (Business B).

Partnership and individuals carrying on a trade or business through two or more firms

Where a partnership carrying on a trade or business has incurred qualifying training expenditure during the basis period for any YA between YA 2011 and YA 2018 (both years inclusive) for the purposes of its trade or business, the aggregate of the deductions that may be allowed to all the partners of the partnership for that expenditure in respect of all the trades and businesses of the partnership cannot exceed 300% of the lower of the qualifying training expenditure or $400,000 (s 14R(5B)).

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Similarly, where an individual carrying on a trade or business through two or more firms (excluding partnerships) has incurred qualifying training expenditure during the basis period for the relevant YAs in respect of such firms for the purposes of the individual's trade or business, the 300% deduction allowed to the individual for that expenditure in respect of all his trades and businesses cannot exceed 300% of the lower of the qualifying training expenditure or $400,000 (s 14R(5A)).

For YA 2011 and YA 2012, the 300% deduction claimable by such partnership and individual is limited to the available relevant amounts.

¶7-835 Qualifying design expenditure

Under the PIC scheme, a person carrying on a trade or business during the basis period for any YA between YA 2011 and YA 2018 (both years inclusive) is allowed, in respect of all that person's trades and businesses, the following deductions for qualifying design expenditure incurred for the purposes of those trades and businesses during each basis period (s 14S):

(a) where qualifying design expenditure is allowed as a deduction under s 14, a further deduction of 300% of the lower of the qualifying design expenditure incurred and $400,000, and

(b) where qualifying design expenditure is not allowed as a deduction under s 14, a deduction of 400% of the lower of the qualifying design expenditure incurred and $400,000.

Note that the combined expenditure cap is $800,000 for YA 2011 and YA 2012, $1.2m for YA 2013 to YA 2015, and $1.2m for YA 2016 to YA 2018.

Where the amount of qualifying design expenditure incurred by a person during the basis period for YA 2011 exceeds $400,000, that person is allowed to claim 300% or 400% deduction for that YA based on the lower of the qualifying design expenditure incurred and $800,000. For the following YA (YA 2012), the amount of the 300% or 400% deduction claimable by that person is the lower of:

(a) the qualifying design expenditure incurred during the basis period for YA 2012, and

(b) the balance, if any, after deducting from $800,000 the amounts of eligible design expenditure in YA 2011 (s 14S(1)).

Where the qualifying design expenditure was incurred by a person prior to the commencement of his trade or business, such expenditure is deemed to have been incurred by that person on the first day on which he carries on that trade or business.

The application of the above rules is illustrated in Examples 13 to 18.

Example 13

Assume Company PQR incurred different amounts of qualifying design expenditure (all allowable as deductions under s 14) during the basis period for the following YAs:

Case	A	B	C
YA 2011	$300,000	$450,000	$850,000
YA 2012	$650,000	$500,000	$100,000
Total	$950,000	$950,000	$950,000

The amount of deductions claimable under s 14S for the relevant YAs is as follows:

	A $	B $	C $
YA 2011			
Normal deduction under s 14	300,000	450,000	850,000
Further deduction of 300%			
– 300% × $300,000	900,000		
– 300% × $450,000		1,350,000	
– 300% × $800,000			2,400,000
Total deductions	1,200,000	1,800,000	3,250,000

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	A $	B $	C $
YA 2012			
Normal deduction under s 14	650,000	500,000	100,000
Further deduction of 300%			
– 300% × $500,000	1,500,000		
– 300% × $350,000		1,050,000	
Total deductions	2,150,000	1,550,000	100,000
Total deductions for both years	3,350,000	3,350,000	3,350,000

Example 14

Assume Company PQR incurred different amounts of qualifying design expenditure (all allowable as deductions under s 14) during the basis periods for the following YAs:

Case	A	B	C
YA 2013	$300,000	$550,000	$850,000
YA 2014	$650,000	$400,000	$100,000
YA 2015	$1,000,000	$1,000,000	$1,000,000
Total expenditure	$1,950,000	$1,950,000	$1,950,000

The amount of deductions claimable under s 14S for the relevant YAs is as follows:

	A $	B $	C $
YA 2013			
Normal deduction under s 14	300,000	550,000	850,000
Further deduction of 300%			
– 300% × $300,000	900,000		
– 300% × $550,000		1,650,000	
– 300% × $850,000			2,550,000
Total deductions	1,200,000	2,200,000	3,400,000
YA 2014			
Normal deduction under s 14	650,000	400,000	100,000
Further deduction of 300%			
– 300% × $650,000	1,950,000		
– 300% × $400,000		1,200,000	
– 300% × $100,000			$300,000
Total deductions	2,600,000	1,600,000	400,000

	A	B	C
	$	$	$
YA 2015			
Normal deduction under s 14	1,000,000	1,000,000	1,000,000
Further deduction of 300%			
– 300% × $(1,200,000 – 300,000 – 650,000)	750,000		
– 300% × $(1,200,000 – 550,000 – 400,000)		750,000	
– 300% × $(1,200,000 – 850,000 – 100,000)			750,000
Total deductions	1,750,000	1,750,000	1,750,000
Total deductions for all three years	5,550,000	5,550,000	5,550,000

Example 15

Assume the same Company PQR incurred the following different amounts of qualifying design expenditure (all allowable as deductions under s 14) during the basis periods for YA 2016, YA 2017 and YA 2018:

Case	A	B	C
YA 2016	$300,000	$550,000	$850,000
YA 2017	$650,000	$400,000	$100,000
YA 2018	$1,000,000	$1,000,000	$1,000,000
Total expenditure	$1,950,000	$1,950,000	$1,950,000

The amount of deductions claimable under s 14S for the relevant YAs is computed in a similar manner as YA 2013, YA 2014 and YA 2015 in Example 14.

Example 16

Assume Company PQR incurred different amounts of qualifying design expenditure which are not deductible under s 14 during the basis period for the following YAs:

Case	A	B	C
YA 2011	$300,000	$450,000	$850,000
YA 2012	$650,000	$500,000	$100,000
Total expenditure	$950,000	$950,000	$950,000

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The amount of deductions claimable under s 14S for the relevant YAs is as follows:

	A	B	C
	$	$	$
YA 2011			
400% deduction			
– 400% × $300,000	1,200,000		
– 400% × $450,000		1,800,000	
– 400% × $800,000			3,200,000
Total deductions	1,200,000	1,800,000	3,200,000
YA 2012			
400% deduction			
– 400% × $500,000	2,000,000		
– 400% × $350,000		1,400,000	
Total deductions	2,000,000	1,400,000	
Total deductions for both years	3,200,000	3,200,000	3,200,000

Example 17

Assume Company PQR incurred different amounts of qualifying design expenditure which are not deductible under s 14 during the basis period for the following YAs:

Case	A	B	C
YA 2013	$300,000	$550,000	$850,000
YA 2014	$650,000	$400,000	$100,000
YA 2015	$1,000,000	$1,000,000	$1,000,000
Total expenditure	$1,950,000	$1,950,000	$1,950,000

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The amount of deductions claimable under s 14S for the relevant YAs is as follows:

	A	B	C
	$	$	$
YA 2013			
400% deduction			
– 400% × $300,000	1,200,000		
– 400% × $550,000		2,200,000	
– 400% × $850,000			3,400,000
Total deductions	1,200,000	2,200,000	3,400,000

	A	B	C
	$	$	$
YA 2014			
400% deduction			
– 400% × $650,000	2,600,000		
– 400% × $400,000		1,600,000	
– 400% × $100,000			400,000
Total deductions	2,600,000	1,600,000	400,000
YA 2015			
400% deduction			
– 400% × $(1,200,000 – 300,000 – 650,000)	1,000,000		
– 400% × $(1,200,000 – 550,000 – 400,000)		1,000,000	
– 400% × $(1,200,000 – 850,000 – 100,000)			1,000,000
Total deductions	1,000,000	1,000,000	1,000,000
Total deductions for all three years	4,800,000	4,800,000	4,800,000

Example 18

Assume the same Company PQR incurred the following different amounts of qualifying design expenditure which are not deductible under s 14 during the basis period for YA 2016, YA 2017 and YA 2018:

Case	A	B	C
YA 2016	$300,000	$550,000	$850,000
YA 2017	$650,000	$400,000	$100,000
YA 2018	$1,000,000	$1,000,000	$1,000,000
Total expenditure	$1,950,000	$1,950,000	$1,950,000

The amount of deductions claimable under s 14S for the relevant YAs is computed in a similar manner as YA 2013, YA 2014 and YA 2015 in Example 17.

A person can conduct the eligible design project either in-house or outsource the project to an approved service provider. Qualifying design expenditure (s 14S(6)) (net of any grants or subsidies from the Government or a statutory board) incurred on eligible design project is as follows:

(a) in-house project — staff costs of qualified designers incurred for an approved industrial or product design project undertaken in Singapore, and

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(b) outsourced project:

(i) the actual amount of staff costs where more than 60% of all payments made to the approved design service provider for the project are staff costs, or

(ii) in all other cases, 60% of those payments.

Industrial or product design means the professional specifications of creating and developing concepts or specifications that improve or enhance the functions, value or appearance of physical products, taking into account the users' needs, marketability and production (s 14S(6)).

Qualifying staff costs are salaries, wages and other benefits, whether in the form of money or otherwise (but excluding directors' fees), paid or granted in respect of the employment of any qualified designer which are attributable to the industrial or product design project (s 14S(6)).

This incentive is administered by the DesignSingapore Council.

¶7-840 Overseas investment development expenditure

As an incentive for companies to venture overseas, approved firms or companies resident and carrying on business in Singapore are allowed a further or double deduction for approved overseas investment development expenditure (s 14K). A further deduction is allowed if the expenditure is allowable as a deduction under s 14. Where the expenditure is not deductible under s 14, a deduction double the amount of the expenditure is allowed (s 14K(1)).

Investment development expenditure for the carrying out of an approved investment project overseas qualifies for further or double deduction (s 14K(1)).

"Investment development expenditure" means expenses directly attributable to the carrying out of any study to identify investment overseas, and any feasibility or due diligence study on any approved investment overseas (s 14K(7)). No further or double deduction is allowable for travelling, accommodation or subsistence expenses or allowances for more than two employees taking part in an approved investment project overseas (s 14K(3)(a)).

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Deduction under s 14K for eligible expenses incurred for qualifying investment development activities has been merged with deduction for eligible expenses incurred for qualifying market development activities under s 14B. The changes will apply only to applications submitted and approved on or after 1 April 2011. A sunset clause with a deadline of 31 March 2016 applies.

As announced in the 2015 Budget, the further deduction for qualifying expenditure incurred on a range of qualifying market expansion and investment activities will be enhanced to include qualifying manpower expenses incurred for Singapore citizens posted to new overseas entities. The amount of qualifying manpower expenses to be allowed a further deduction will be capped at $1m per approved entity per year, subject to conditions. This change will apply to qualifying manpower expenses incurred from 1 July 2015 to 31 March 2020. Applications for further deduction of qualifying manpower expenses will be processed by IE Singapore.

IE Singapore will release further details by May 2015.

¶7-850 Others

Building modifications for disabled employees

Where a person, being the owner or lessee of any premises and carrying on a trade, business or profession at those premises, has incurred approved expenditure on any addition or alteration to those premises to facilitate the mobility or work of any disabled employee, the expenditure qualifies for a special deduction under s 14H. The maximum cumulative deduction allowed under s 14H is $100,000. If an amount of expenditure has been allowed a deduction under s 14H, that same amount will not qualify for deduction under any other provisions of the Act.

Provisions by banks and qualifying finance companies for doubtful debts and diminution in value of investments

A special deduction is available for provisions made by banks and qualifying finance companies for doubtful debts and diminution in value of investments. Conditions apply (see s 14I and ¶17-440).

Relocation or recruitment of overseas talent

Section 14L provides for further deduction in respect of "prescribed expenses" incurred in relocating or recruiting any "prescribed employee" from outside Singapore to be employed in Singapore. The expenses must be incurred by a taxpayer in relocating or recruiting such an employee for his trade, profession or business (see the Income Tax (Further Deduction for Expenses Incurred in Relocation or Recruitment of Overseas Talent) Regulations).

Only "prescribed expenses" incurred during the period from 1 October 1998 to 30 September 2013 qualify for further deduction. The amount of further deduction is to be reduced by the amount of any government grant received under a recruitment or relocation assistance scheme in respect of prescribed employees. The total amount of further deduction allowed to any person for any YA is restricted to $275,000 in respect of all prescribed employees employed during the basis period for that YA.

A "prescribed employee" is a person who:

- has been recruited from outside Singapore
- has not been employed by his current (or a related) employer during the period between his last employment in Singapore and the current employer, and:
  - (i) holds an employment pass (type P1 or P2), or
  - (ii) is a Singapore citizen or permanent resident whose employment status is equivalent to a P1 or P2 employment pass holder. During the 18 months immediately before his being employed by the current employer, he must have been employed by a person outside Singapore for at least 12 months in aggregate.

A "current employer" refers to the taxpayer claiming the s 14L deduction. A "related employer", in relation to a current employer, means any person who controls, or is controlled, by the current employer, or where both are under the control of a common person.

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"Prescribed expenses" mean:

- in relation to a type P1 employment pass holder (or approved equivalent status), the recruitment and relocation expenses incurred in respect of that prescribed employee, subject to a maximum of $25,000, and
- in relation to a type P2 employment pass holder (or approved equivalent status), the relocation expenses incurred in respect of that prescribed employee, subject to a maximum of $15,000.

Table 3: Further deductions for relocation or recruitment expenses

Description	*P1 employment pass (or equivalent)*	*P2 employment pass (or equivalent)*
Relocation expenses for employee	$15,000 (includes recruitment expenses)	$5,000
Relocation expenses for spouse	$5,000	$5,000
Relocation expenses for unmarried children under the age of 21 years	$2,500 per child (maximum of 2 children)	$2,500 per child (maximum of 2 children)
Total cap per employee	$25,000	$15,000
Cap per employer per assessment year	$275,000	$275,000

Recruitment expenses are expenses incurred to recruit a person from outside Singapore to be employed in Singapore and include:

- fees paid to an employment agency, and
- return airfare incurred on bringing the prescribed employee for recruitment interviews or sending a person overseas to interview the prescribed employee for employment in Singapore.

Relocation expenses are expenses incurred in relocating a prescribed employee from outside Singapore to be employed in Singapore and include:

- one-way airfare to Singapore for the prescribed employee to commence employment
- in respect of any spouse and any unmarried child (below the age of 21 years), one-way airfare to Singapore for each person with the trip to be made within one year from commencement of employment
- baggage allowance
- expenses incurred in providing temporary accommodation in Singapore for the prescribed employee (period not to exceed 30 days) or an allowance for that purpose, before the prescribed employee obtains his own place of residence, and
- allowance for furnishing the prescribed employee's place of residence in Singapore.

This scheme expired on 30 September 2013.

Hotel refurbishment expenditure

A person carrying on a hotel trade or business can deduct expenditure incurred on the refurbishment of hotel premises, if it is a project approved by the Minister. The application has to be made on or before 30 June 2003 and the project must be completed on or before 30 June 2006 (s 14M(1)). The deduction (at a rate to be specified between 100% and 150%) is available on the qualifying expenditure incurred during the qualifying period during which the approved refurbishment project is to be carried out. The deduction is given, on due claim, on a straight-line basis over five years (not necessarily consecutive years) against the income from the hotel trade or business. Once any qualifying expenditure is allowed as a special deduction under s 14M, no deduction will be allowed under any other provisions of the Act.

A further deduction account is to be maintained and credited with an amount equal to the excess of the s 14M deduction allowed over qualifying expenditure incurred.

During the qualifying period, and up to five years after the completion of the project, the Minister's written approval must be obtained if the person carrying on the hotel trade or business decides to:

- sell, lease out or otherwise dispose of any asset in respect of which a s 14M deduction has been given
- cease using the hotel premises or any part of it for his hotel trade or business, or
- sell, lease out or otherwise dispose of the hotel premises or any part of it (s 14M(18)).

The tax recovery provisions will apply if any of the above events occur. The person will be deemed to have derived income equal to the total amount of deduction allowed in respect of the assets or any part of the hotel premises to which the event relates (s 14M(19)). However, the Minister may reduce the amount of deemed income (s 14M(20)).

Upfront land premium

Section 14N provides for the deduction of upfront land premium paid by a lessee to the Housing & Development Board (HDB) or the JTC in respect of a designated lease for the construction or use of a building or structure on industrial land if:

- the lease is granted by the HDB or the JTC for a maximum period of 60 years on or after the first day of the lessee's basis period for YA 2004 but before 28 February 2013 (the maximum period was formerly 30 years), and
- the building/structure is used for a qualifying activity at the end of the respective basis period as set out in s 18(1) other than for the activities in s 18(1)(h) and 18(1)(l) (ie used as an industrial building/structure other than a hotel on Sentosa or a building for tourist industry).

The upfront lease premium paid is deductible on a straight-line basis over the term of the lease (s 14N(1)). Similar to the requirement for industrial building allowance, if more than 10% of the built-up area of the building/structure is not used for any qualifying activity, the deduction is not allowed in respect of that non-qualifying part (s 14N(5)).

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Where an assignee has acquired the remaining lease term, the assignee can deduct the lower of:

- the residual expenditure immediately after the assignment, or
- the upfront land premium at the time of the assignment, divided by the remaining number of whole years of the term of the lease for which the premium was paid (s 14N(2)).

This scheme has expired and is no longer available for leases granted on or after 28 February 2013.

Special reserve of approved general insurer

From YA 2005, an approved general insurer, carrying on the business of insuring and reinsuring offshore risks, can deduct the prescribed amount of special reserves it had set aside for prescribed offshore risks (s 14O). The deduction is allowed for a period of 10 years. The approved status is granted by the Minister or such person as he may appoint. An "insurer" is a company registered under the *Insurance Act (Cap 142, 2002 Revised Ed)* to carry on insurance business in Singapore; or a person (including a partnership), other than an individual, permitted under the *Insurance Act* to carry on insurance business in Singapore under a foreign insurer scheme.

Logistics expenses

Under s 14C, approval for deductions of approved logistic expenses was granted until 30 June 2009. This further deduction was available for up to 10 YAs to an approved company for specified logistics expenses that it incurred. To be considered for approval, the company must have been resident in Singapore, and must have undertaken logistics activities in-house in support of its business activities or outsourced its logistics activities to a service provider. Logistics expenses are expenses incurred by an approved company that are:

(a) directly attributable to the carrying out of logistics activities by the company in Singapore, or

(b) paid to a service provider that carries out the company's logistics activities in Singapore,

but exclude such expenses on international freight.

Renovation or refurbishment works

As a general rule, expenditure incurred on renovation or refurbishment works (R&R expenses) on the business premises is of a capital nature and is not deductible for tax purposes. Such expenditure would not qualify for CAs under s 19 or 19A as the expenditure is incurred in relation to the business setting within which the business is carried on and not on the provision of "plant or machinery". If, however, the premises forms part of a building which qualifies for industrial building allowances, then industrial building allowances under s 16 could be claimed on the R&R expenses.

To help SMEs reduce their business costs, especially those whose business premises do not qualify for industrial building allowances, taxpayers can claim a tax deduction for qualifying R&R expenses incurred on or after 16 February 2008 for renovating or refurbishing their business premises (s 14Q(1)).

The deduction under s 14Q will be granted on a straight-line basis, starting from the YA relating to the basis period in which the qualifying R&R expenses were first incurred and claimed by the taxpayer (s 14Q(3)). The amount of qualifying R&R expenses that can be deducted is subject to an expenditure cap of $300,000 ($150,000 before YA 2013) for every relevant three-year period, starting from the basis period for the YA in which the R&R expenses were first incurred and a tax deduction claimed by the taxpayer. In the case of partnerships, the expenditure cap of $300,000 is applied at the partnership level.

The taxpayer must make a claim for the R&R expenses, otherwise it will not be granted a s 14Q deduction (s 14Q(2)). Once the taxpayer has made the claim for a s 14Q deduction, it will be granted the deduction as long as it continues to carry on that trade, business or profession for which the R&R expenses were incurred. Accordingly, if the taxpayer permanently ceases to derive income from such trade, business or profession in any of the three YAs, deduction will not be allowed for the unclaimed balance of the R&R expenses (s 14Q(7)(b)).

Where the R&R expenses qualify for deduction as repairs or renewal expenses under s 14(1)(c) or for CAs being capital expenditure incurred on the provision of plant or machinery, the taxpayer can choose not to claim the deduction under s 14Q.

Where a premises is used for both business and other purposes, only R&R expenses that are specifically identifiable to the area used for business purposes will qualify for the deduction under s 14Q.

Where there are unutilised s 14Q deductions in any YA, the taxpayer can either carry forward the amount for set-off against its future income or carry back the amount for set-off against its assessable income of the immediate preceding YA subject to the relevant conditions being satisfied. Note that the unutilised s 14Q deductions do not qualify for transfer under the group relief system (s 37C(15)(e)) up to YA 2012. From YA 2013, unutilised s 14Q deductions will qualify for transfer under the group relief system.

As long as the renovation or refurbishment works do not involve any structural changes for which prior approval from the Commissioner of Building Control is required, all R&R expenses would qualify for deduction unless prohibited. The costs that do not qualify for deduction under s 14Q are designer fees or professional fees, cost of antiques, and costs of any type of fine art including paintings, drawings, prints, calligraphy, mosaic, sculptures, pottery or art installations (s 14Q(9)).

The IRAS e-Tax Guide "Deduction for Expenditure Incurred on Renovation or Refurbishment Works Done to Your Business Premises", published on 6 June 2013 has listed the following deductible R&R expenses if they do not affect the structure of the business premises:

(a) general electrical installations and wiring to supply electricity
(b) general lighting
(c) hot/cold water systems (pipes, water tanks, etc)
(d) gas systems
(e) kitchen fittings (sinks, pipes, etc)
(f) sanitary fittings (toilet bowls, urinals, plumbing, toilet cubicles, vanity tops, wash basins, etc)

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(g) doors, gates and roller shutters (manual or automated)
(h) fixed partitions (glass or otherwise)
(i) wall coverings (such as paint, wallpaper, etc)
(j) flooring (marble, tiles, laminated wood, parquet, etc)
(k) false ceilings and cornices
(l) ornamental features or decorations that are not fine art (mirrors, drawings, pictures, decorative columns, etc)
(m) canopies or awnings (retractable or non-retractable)
(n) windows (including grilles, etc), and
(o) fitting rooms in retail outlets.

¶7-860 Treasury shares transferred under employee equity-based remuneration schemes

The *Companies Act* allows a company to hold its own shares in treasury instead of cancelling them (such shares are termed treasury shares) and to use such shares to fulfil its obligations under its Employee Stock Option Scheme (ESOS) and its Share Award Scheme (SAS) (collectively referred to as employee equity-based remuneration (EEBR) schemes). A company can buy back its own shares from the market or buy its parent company's shares from the parent company.

From YA 2007, companies can claim a deduction for the cost of treasury shares transferred during the basis period for that YA under the following equity-based remuneration schemes (s 14P):

- ESOS — applicable to options that are exercised on or after 30 January 2006, and
- SAS — applicable to shares that are granted (where there is no vesting imposed) and shares that are vested (where there is vesting imposed) on or after 30 January 2006.

No deduction is allowed where new shares are issued by a company to fulfil its obligations under its EEBR scheme.

Chapter 7

Time of deduction

A transfer of treasury shares is effected when the employees acquire the legal and beneficial interest in the treasury shares (s 14P(7)). Accordingly, the point of deduction is at the following time when the treasury shares are applied for the benefit of the employees:

- For ESOS — at the time of exercise of the options by the employees, and
- For SAS — at the date of vesting of the shares to the employees (where there is vesting imposed), and at the date of grant of the shares (where there is no vesting imposed).

Cost of treasury shares

The amount of deduction to be allowed is the cost incurred by the company to acquire the said treasury shares less any amount payable by the employee for the said treasury shares (s 14P(2)). The IRAS has clarified that the cost of treasury shares would include expenses directly related to the acquisition of the shares such as brokerage charges and

Central Depository (Pte) Limited (CDP) charges but not any interest cost incurred to finance the purchase of the treasury shares. Such interest cost would be deductible under s 14(1)(a) if the treasury shares are intended to fulfil the company's obligations under the ESOS and SAS.

Section 14P(4) provides the following three methods for determining the cost of the treasury shares:

(a) On the basis that treasury shares acquired at the earliest point in time are deemed to be transferred first (ie first-in, first-out method)

(b) In accordance with the formula **A/B × C** (ie weighted average method), where:

A is the number of treasury shares transferred by the company to the person

B is the total number of treasury shares held by the company immediately before the transfer to the person, and

C is the total cost of acquiring all the treasury shares held by the company immediately before the transfer to the person, or

(c) On the basis of the aggregate cost of all treasury shares transferred to all persons within each regular interval during the relevant basis period computed in accordance with the formula —

D/(E + F) × (G + H), where:

D is the total number of treasury shares transferred during the relevant basis period by the company to all persons within that interval

E is the total number of treasury shares held by the company at the end of the interval immediately preceding that interval

F is the total number of treasury shares acquired by the company within that interval

G is the total cost of acquiring all the treasury shares held by the company at the end of the interval immediately preceding that interval, and

H is the total cost of acquiring all the treasury shares by the company within that interval.

The company has to elect which method it would adopt for determining the cost of the treasury shares and, if appropriate, the length of any regular interval. The selected basis has to be consistently applied. Once made, the election is irrevocable (s 14P(3)).

Excess of amount payable by employee over the cost of the treasury shares

In the case where the amount payable by the employee exceeds the cost of the treasury shares, no deduction is allowed to the company since there is no real cost to the company. The excess amount will not be taxable to the company. The amount is to be credited to a special account for the purpose of using the excess amount to reduce the cost of future transfers of treasury shares to employees (s 14P(5) and 14P(6)).

Recharges from parent company for shares transferred to subsidiary company's employees

Where a parent company recharges its subsidiary for the cost of treasury shares it bought for transfer to the employees of its subsidiary under an EEBR scheme, the subsidiary can claim a deduction for the amount of the recharge less any amount paid by the employees (s 14P(8)(b)). The deduction will be granted not at the point of recharge but at the date of the transfer of the shares to the employees or the date of payment to the parent company, whichever is the later.

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The parent company will not be allowed any deduction for the cost of the treasury shares transferred even if it does not recharge its subsidiary. As the employees of the subsidiary are not employees of the parent company, any costs incurred on such employees are not incurred wholly and exclusively in the production of the parent company's income.

Where a parent company (whether a Singapore or foreign company) recharges its subsidiary for the cost of new shares issued to the employees of its subsidiary, no deduction will be allowed to the subsidiary.

Special purpose vehicle

A company that has set up a SPV to act as trustee to acquire its parent company's shares for its EEBR scheme may be granted a tax deduction for the cost incurred to acquire its parent company's shares through that SPV for the fulfilment of its EEBR obligations where:

(a) The SPV is set up, as a company or a trust, solely to administer the EEBR scheme(s) for companies within the group, and

(b) The SPV acquires the parent company's shares from the parent company or the market and holds them in trust for the employees of the companies within the group for the EEBR scheme(s).

The tax deduction, which takes effect from YA 2012, is based on the lower of:

(a) the amount paid by the company to the SPV for the parent company's shares, and

(b) the cost incurred by the SPV to acquire the parent company's shares,

less any amount recovered from the company's employees for the parent company's shares.

The deduction will relate to the basis period in which the company is eligible to claim the tax deduction in respect of the shares and apply the parent company's shares pursuant to the EEBR scheme or is liable to pay the SPV for the shares transferred, whichever is the later. See IRAS e-Tax Guide "Income Tax: Tax Deduction for Shares Used to Fulfil Obligations under an Employee Equity-based Remuneration Scheme", published on 8 July 2011.

As is currently the case, no deduction will be allowed in respect of the costs incurred by the company in the purchase of its parent company's newly issued shares through the SPV.

The following examples are taken from the IRAS e-Tax Guide:

- Example 19 showing the timing and computation of the amount of deduction where no SPV is involved (Annex 1 of the IRAS e-Tax Guide)
- Example 20 showing the application of the excess amount against the cost of treasury shares (Annex 2 of the IRAS e-Tax Guide)
- Example 21 showing the computation of the amount of deduction where a SPV is involved based on the FIFO method (Annex 3 of the IRAS e-Tax Guide), and
- Example 22 showing the deductibility and timing of deduction where a SPV is involved (Annex 4 of the IRAS e-Tax Guide).

Example 19

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EXAMPLE ILLUSTRATING THE TIMING AND COMPUTATION OF AMOUNT OF TAX DEDUCTION TO BE GIVEN (WHERE NO SPV IS INVOLVED)

The following table shows the timing and amount of the tax deduction for a company (with an accounting year end of 31 December) that has used treasury shares to fulfill its obligations under its EEBR schemes not administered by a SPV.

		ESO scheme	Share award scheme
	Example: Details of acquisition of treasury shares: Date of Purchase / No. of treasury shares acquired / Cost 31 Jan 2006 / 2,000 / S 4,000 5 Apr 2006 / 5,000 / S 7,500 12 Aug 2006 / 1,000 / S 3,000 8,000 / $14,500	Date of grant of option: 5 Dec 2002 Date of exercise: 8 May 2006 No. of options exercised: 3,000 Exercise price payable by employee: $1 per share	Date of grant of shares (with vesting imposed): 31 Mar 2003 Date of vesting: 3 Sep 2006 No. of shares vested to employees: 4,500
A	**Whether tax deduction for treasury shares can be given to company**	Since the options are exercised on or after 30 Jan 2006, a tax deduction will be given to the company for shares transferred to employees under the ESO scheme.	Since the shares are vested to the employees on or after 30 Jan 2006, a tax deduction will be given to the company for shares transferred to employees under the share award scheme. *[Note: For share awards with no vesting imposed, a tax deduction will be given for shares granted on or after 30 Jan 2006]*
B	**Timing of tax deduction**	At the date of exercise – 8 May 2006 (i.e. tax deduction given for YA 2007)	At the date of vesting – 3 Sep 2006 (i.e. tax deduction given for YA 2007)

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C	**Amount of tax deduction to be given if "first-in-first-out" method is used**	(i) Upon exercise of the options on 8 May 2006: Cost of 2,000 shares acquired on 31 Jan 2006 Cost of 1,000 shares acquired on 5 Apr 2006 Cost of 3,000 shares transferred on 8 May 2006 Less : Exercise price payable by employees Tax deduction to be allowed (ii) Upon vesting of shares to employees on 3 Sep 2006: Cost of 4,000 shares acquired on 5 Apr 2006 Cost of 500 shares acquired on 12 Aug 2006 Cost of 4,500 shares transferred on 3 Sep 2006 Less: Amount payable by employees Tax deduction to be allowed Total tax deduction to be allowed for YA 2007 ($2,500 + $7,500)	 $4,000 $1,500 $5,500 $3,000 $2,500 $6,000 $1,500 $7,500 NIL $7,500 $10,000
D	**Amount of tax deduction to be given if weighted average method is used** *[Note: Cost of treasury shares computed based on transaction-by-transaction basis]*	(i) Upon exercise of the options on 8 May 2006: Cost of 3,000 shares (3,000 / 7,000 x $11,500) Less : Exercise price payable by employees Tax deduction to be allowed (ii) Upon vesting of shares to employees on 3 Sep 2006: Cost of 4,500 shares [4,500 / 5,000 x ($14,500 $4,929)] Less: Amount payable by employees Tax deduction to be allowed Total tax deduction to be allowed for YA 2007 ($1,929 + $8,614)	 $4,929 $3,000 $1,929 $8,614 NIL $8,614 $10,543

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E	**Amount of tax deduction to be given if weighted average method is used** *[Note: Cost of treasury shares computed based on interval-by-interval basis]*	Assuming the company has chosen 12 months as the regular interval, the tax deduction to be allowed for the treasury shares transferred under the EEBR schemes is as follows: Cost of 7,500 shares transferred (7,500/8,000 x $14,500) — $13,594 Less : Amount payable by employees — 3,000 Tax deduction to be allowed for YA 2007 — $10,594

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Example 20

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EXAMPLE ILLUSTRATING THE APPLICATION OF THE EXCESS AMOUNT TO REDUCE THE COST OF TREASURY SHARES

Details of treasury shares acquired and disposed of/transferred by Company X:

Date	Transaction	No. of treasury shares	Cost per shares ($)	No. of shares outstanding	Total cost				
					Using "first-in-first-out" method		Using weighted average method		
					Add/(less)	Bal ($)	Add/(less)	Bal ($)	Weighted average price
31 Jan 2006	Purchase of shares for cash	3,000	2.00	3,000	3,000@2.00 = 6,000.00	6,000.00	3,000@2.00 = 6,000.00	$6,000.00	2.00
1 Apr 2006	Purchase of shares for cash	7,000	1.80	10,000	7,000@1.80 = 12,600.00	18,600.00	7,000@1.80 = 12,600.00	18,600.00	1.86
30 Apr 2006	Transferred under ESO plan	(1,400)	-	8,600	(1,400@2.00) = (2,800.00)	15,800.00	(${}^{1,400}/_{10,000}$ x 18,600) = (2,604.00)	15,996.00	1.86
2 May 2006	Sale of shares for cash	(2,000)	-	6,600	(1,600@2.00 + 400@1.80) = (3,920.00)	11,880.00	(${}^{2,000}/_{8,600}$ x 15,996) = (3,720.00)	12,276.00	1.86
8 May 2006	Transferred under ESO plan	(4,100)	-	2,500	(4,100@1.80) = (7,380.00)	4,500.00	(${}^{4,100}/_{6,600}$ x 12,276) = (7,626.00)	4,650.00	1.86
6 Jul 2006	Purchase of shares for cash	2,500	2.20	5,000	2,500@2.20 = 5,500.00	10,000.00	2,500@2.20 = 5,500.00	10,150.00	2.03
15 Sep 2006	Purchase of shares for cash	1,000	2.30	6,000	1,000@2.30 = 2,300.00	12,300.00	1,000@2.30 = 2,300.00	12,450.00	2.075
30 Sep 2006	Transferred under ESO plan	(3,300)	-	2,700	(2,500@1.80 + 800@2.20) = (6,260.00)	6,040.00	(${}^{3,300}/_{6,000}$ x 12,450) = (6,847.50)	5,602.50	2.075
30 Nov 2006	Transferred under ESO plan	(2,700)	-	0	(1,700@2.20 + 1,000@2.30) = 6,040.00	0.00	(${}^{2,700}/_{2,700}$ x 5,602.50) = (5,602.50)	0.00	0.00

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Details of the stock option plans of Company X:

Date of grant of options	Expiry date	Exercise price ($)	No. of options outstanding as at 1 Jan 2006	Exercise date	No. of options exercised	Amount payable by employees upon exercise ($)
9 May 2001	9 May 2006	1.90	5,500	30 Apr 2006	1,400	2,660.00
				8 May 2006	4,100	7,790.00
19 Oct 2002	19 Oct 2007	1.80	6,300	30 Sep 2006	3,300	5,940.00
19 Dec 2002	19 Dec 2007	2.00	4,500	30 Nov 2006	2,700	5,400.00
Total			16,300		11,500	21,790.00

Movements in the number of stock options and their related exercise price:

	Date of grant of options						Total options outstanding
	9 May 2001		19 Oct 2002		19 Dec 2002		
	Options outstanding	Exercise price	Options outstanding	Exercise price	Options outstanding	Exercise price	
As at 1 Jan 2006	5,500	1.90	6,300	1.80	4,500	2.00	16,300
As at 30 Apr 2006 (1,400 exercised)	4,100	1.90	6,300	1.80	4,500	2.00	14,900
As at 8 May 2006 (4,100 exercised)	0		6,300	1.80	4,500	2.00	10,800
As at 30 Sep 2006 (3,300 exercised)	0		3,000	1.80	4,500	2.00	7,500
As at 30 Nov 2006 (2,700 exercised)	0		3,000	1.80	1,800	2.00	4,800

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Computation of amount of tax deduction to be given using the different methods:

		"First-in-first-out" method		Weighted average method on a transaction-by-transaction basis		Weighted average method on a half-yearly basis	
		$	$ Special a/c	$	$ Special a/c	$	$ Special a/c
Upon exercise of options on 30 Apr 06	Cost of shares transferred	2,800.00		2,604.00			
	Less: Amount payable by employees	(2,660.00)		(2,660.00)			
	Excess of exercise price over cost			(56.00)	56.00		
	Amount of tax deduction to be given	**140.00**		**NIL**			
Upon exercise of options on 8 May 06	Cost of shares transferred	7,380.00		7,626.00		10,230.00[a]	
	Less: Amount payable by employees	(7,790.00)		(7,790.00)		10,450.00[b]	
	Excess of exercise price over cost	(410.00)	410.00	(164.00)	164.00	(220.00)	220.00
	Amount of tax deduction to be given	**NIL**		**NIL**		**NIL**	
	Balance in special account				220.00		
Upon exercise of options on 30 Sep 06	Cost of shares transferred	6,260.00		6,847.50			
	Less: Amount payable by employees	(5,940.00)		(5,940.00)			
		320.00		907.50			
	Less: Amount from special account	(320.00)	(320.00)	(220.00)	(220.00)		
	Amount of tax deduction to be given	**NIL**		**687.50**			
	Balance in special account		90.00		NIL		
Upon exercise of options on 30 Nov 06	Cost of shares transferred	6,040.00		5,602.50		12,450.00[c]	
	Less: Amount payable by employees	(5,400.00)		(5,400.00)		11,340.00[d]	
		640.00		202.50		1,110.00	
	Less: Amount from special account	(90.00)	(90.00)	0.00		(220.00)	(220.00)
	Amount of tax deduction to be given	**550.00**		**202.50**		**890.00**	
	Balance in special account		NIL				NIL
Total tax deduction for YA 2007		**690.00**		**890.00**		**890.00**	

a = Aggregate cost of shares transferred from Jan to Jun 2006 = $^{(1,400+4,100)}/_{(3,000+7,000)} \times (6,000 + 12,600)$

b = Total amount payable by employees for options exercised from Jan to Jun 2006 = 2,660 + 7,790

c = Aggregate cost of shares transferred from Jul to Dec 2006 = $^{(3,300+2,700)}/_{(2,500+2,800+1,000)} \times (4,650 + 5,500 + 2,300)$

d = Total amount payable by employees for options exercised from Jul to Dec 2006 = 5,940 + 5,400

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Example 21

Annex 3

EXAMPLE ILLUSTRATING THE COMPUTATION OF AMOUNT OF TAX DEDUCTION FOR SHARES TRANSFERRED UNDER AN EEBR SCHEME ADMINISTERED BY A SPV BASED ON THE FIFO METHOD

(1) The SPV adopts the FIFO method of costing Co A's shares used for the EEBR scheme it is administering for Co A. (2) The accounting year-end of Co A is 31 Dec.

Date	Transaction of SPV	No of Shares	Cost/ share($)	Bal no of shares	Cost using FIFO method of costing		Comparative costs	lower / lowest cost	Allowable amount ($)
					Add/(less)	Bal Total cost ($)			
02-May-10	paid cash for CoA's shares from SGX	3,000	2.00	3,000	3,000 x 2.00 = 6,000	6,000			
01-Mar-11	bought CoA's TS from CoA	7,000	1.80	10,000	7,000 x 1.8 = 12,600	18,600			
	(Co A has bought these TS from the market at $1.50/share)								
30-Apr-11	transferred shares under ESO plan	(1,400)		8,600	(1,400) x 2.00 =(2,800) OR	15,800		lower of the cost [Para 6.5.3 (a)]	2,380
	(recharged CoA the transferred shares at FV of $1.70/share)						(1,400) x 1.70 =2,380		
30-Jun-11	transferred shares under ESO plan	(4,100)		4,500	(1,600) x 2.00 = (3,200) OR	12,600		[Para 6.5.3 (a)] i.e. 2,560	
	(recharged CoA the FV of transferred shares $1.60/ share)						(1,600) x1.60 =2,560		(2,560 + 3,750) = **6,310**
				4,500	(2,500) x 1.80 = (4,500) OR	8,100		Lowest of the costs [Para 6.5.3 (b)] i.e.3,750	
	(recharged CoA the transferred shares at FV of $1.60/share)						(2,500) x 1.60 =4,000 OR		
	(cost of treasury shares being transferred to SPV)						(2,500) x 1.50 =3,750		
07-Jul-11	purchase shares from open market	5,500	1.80	10,000	5500 x 1.8 = 9,900	18,000			
02-Jan-12	transferred shares under ESO plan	(3,000)		7,000	(3,000) x 1.80 = (5,400) OR	12,600		Lowest of the costs [Para 6.5.3 (b)] i.e.4,200	
	(recharged CoA the transferred shares at FV of $1.40/share)						(3,000) x 1.40 =4,200 OR		4,200
	(cost of treasury shares before being transferred to SPV)						(3,000) x 1.50 = 4,500		

If the employees paid $3,000 for the transferred shares in 2011, the amount to be allowed for YA 2012 =$ (2,380 + 6,310 - 3,000) = $5,690

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Example 22

Annex 4

EXAMPLES ILLUSTRATING THE DEDUCTIBILITY AND TIMING OF TAX DEDUCTION WHERE SPV ADMINISTERS THE EEBR SCHEME

Companies A, B, C and D grant their employees share awards under an EEBR scheme administered by a SPV. All the companies have financial year ending on 31 December.

The companies incur the cost of shares awarded to their respective employees either before or after the shares are vested to these employees as illustrated below:

Shares awarded to employees of :	Date of vesting of shares to employee	Date of Payment for shares	Tax Deduction
Company A	Feb 2011	Dec 2010	Allowed in the YA 2012 (Note 1)
Company B	Sep 2010	Mar 2011	Disallowed (Note 2)
Company C	Mar 2011	Jan 2012	Allowed in the YA 2013
Company D	Apr 2012	Dec 2011	Allowed in the YA2013

Notes:

1. Since the shares are vested in the basis period for YA 2012, tax deduction is allowed despite payment being made prior to YA 2012.
2. Although payment is made in basis period for YA 2012, the shares were vested prior to the basis period for YA2012.

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Source: IRAS e-Tax Guide "Income Tax: Tax Deduction for Shares Used to Fulfil Obligations under an Employee Equity-based Remuneration Scheme", published on 8 July 2011.

The Annexes are extracted from the IRAS e-Tax Guide. Visit www.iras.gov.sg for more information.

¶7-870 Statutory and regulatory expenses

Statutory and regulatory expenses incurred to comply with laws and regulations are not deductible because such expenses are not regarded as wholly and exclusively incurred in the production of income. For example, audit fees incurred to meet the statutory obligation imposed under the *Companies Act* would not be deductible (if not for the administrative concession) on the basis that such fees are incurred after the income is earned.

To encourage the maintenance of a high level of general compliance with laws and Regulations, and to support the efforts of businesses to comply with statutory and regulatory requirements, qualifying statutory and regulatory expenses incurred by a business from YA 2014 will be deductible under s 14X subject to conditions.

For the purposes of s 14X, "business" refers to any activity or enterprise for which a business entity is established to carry out in accordance with its constitutional documents, ie its memorandum and articles of association.

Statutory and regulatory expenses which would have qualify for deduction under other provisions of the Act would not be deductible under s 14X. Expenses that are capital in nature are also not deductible.

Further details can be found in the IRAS e-Tax Guide "Deduction for Statutory and Regulatory Expenses", published on 12 September 2014.

¶7-900 Donations

Donations, being application of income, are not incurred in the production of the income and are therefore not deductible under s 14. To encourage philanthropic giving, the Act allows double deduction for certain donations under s 37(3).

To encourage greater charitable giving during the economic downturn, the tax deduction for donations made between 1 January 2009 and 31 December 2010 was increased from 200% to 250% (s 37(3A)). It was announced during the 2011 Budget that the 250% tax deduction is extended for another five years for donations made during the period 1 January 2011 to 31 December 2015.

As announced in the 2015 Budget, to continue to build a stronger culture of giving and to celebrate Singapore's jubilee, the tax deduction for donations made between 1 January 2015 to 31 December 2015 will be increased from the current 250% to 300%. The tax deduction will revert to 250% for donations made from 1 January 2016 to 31 December 2018.

Note that the deduction for approved donations made to institutions of a public character (IPCs) on or after 1 January 2011 will not be allowed to a person if that person does not furnish the information as specified by the Comptroller to the institutions within the prescribed time (s 37(3B)).

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Section 37(3) provides for the deduction of qualifying donations on a preceding calendar year basis. However, for companies, sole proprietors and partnerships whose accounting year ends on a date other than 31 December, the deduction of donations is on a preceding accounting year basis (s 37(10A)).

Example 23

The following donations were made by ABC Company during its financial year ended 30 June 2015:

Date	*Organisation/Institution**	*Nature of donation*	*Amount $*
1 August 2014	Community Chest of Singapore	Cash	15,000
31 October 2014	Nanyang Technological University	10 computers	12,000
31 December 2014	Katong Children's Home	20 beds	2,000
1 February 2015	Sunset Home for the Aged	Cash	5,000
* All are approved IPCs.			
The amount of allowable donations for YA 2016 under the preceding accounting year basis is $80,000 (2.5 x $32,000). The donation of 20 beds valued at $2,000 does not qualify for deduction.			

Qualifying donations

Table 4 sets out the types of donations that qualify for tax deduction.

Table 4: Donations that qualify for tax deduction

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		Who grants the approval?	*Other conditions or features*
(1)	Cash donations to the Government or any approved IPC in Singapore or a registered grant-making philanthropic organisation (s 37(3)(c))	Minister or any Central Fund Administrator	The Minister may appoint any IPC to be a Central Fund Administrator for the purposes of approving IPCs and regulating the administration of donations made to an approved IPC.
(2)	Donation to an IPC of: • shares of a company listed on the Singapore Exchange (s 37(3)(e)) • units in unit trusts traded in Singapore or listed on the Singapore Exchange (s 37(3)(e))	Minister or any Central Fund Administrator	See above. Donor must be an individual. The donation amount is the value of the shares or unit trusts donated. • The value of shares and units in a unit trust traded on the Singapore Exchange is based on their last transacted open-market prices on the date of the legal transfer of the shares or units. • For units in all other unit trusts, the value is based on their bid price immediately after the date of their legal transfer (s 37(19)).

		Who grants the approval?	Other conditions or features
(3)	Approved donation of artefact or work of art to an approved museum (s 37(3)(b)(i))	Minister or his appointee	The donation amount is the value as determined by the Minister or his appointee. The National Heritage Board administers this scheme.
(4)	Approved donation of sculpture or work of art for public display outdoors to an approved recipient that is not an approved museum (s 37(3)(b)(ii))	Minister or his appointee	See above.
(5)	Approved donation of a computer (including software and peripherals) to: • a prescribed educational, research or other institution in Singapore, or • an IPC (s 37(3)(d))	Minister or his appointee	Donor must be a company. The donation amount is the value of the computer (including computer software and peripherals) donated. Approved institutions include primary schools and secondary schools, junior colleges, centralised institutes and language centres, and other educational and research institutions. See the Income Tax (Computer Gifts — Educational, Research and other Institutions) Rules.
(6)	Donation of any immovable property to an IPC (s 37(3)(f))	Minister or any Central Fund Administrator	The donation amount is the value to be determined by a licensed appraiser and approved by the Chief Valuer. Donors will have the flexibility to decide if they want to donate the sales proceeds of the asset or the asset itself. Both options will give them an equivalent amount of tax deduction.

An institution of a public character

Under s 2(1), an "institution of a public character" has the same meaning as in the *Charities Act (Cap 37, 2007 Revised Ed)*. The term is defined in s 40A of the *Charities Act* as an institution or fund in Singapore which is:

(a) a hospital not operated or conducted for profit

(b) a public or benevolent institution not operated or conducted for profit

(c) a public authority or society not operated or conducted for profit and which is engaged in research or other work connected with the causes, prevention or cure of disease in human beings

(d) a university or a public fund for the establishment, maintenance, enlargement or improvement of a university

(e) an educational institution not operated or conducted for profit, or a public fund for the establishment, maintenance, enlargement or improvement of such an educational institution

(f) a public or private fund for the provision, establishment or endowment of a scholarship, exhibition or prize in a university, or an educational institution not operated or conducted for profit

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(g) a public fund established and maintained for the relief of distress among members of the public

(h) an institution which is established for charitable, benevolent or philanthropic purposes only, or

(i) an organisation not operated or conducted for profit which is engaged in or connected with the promotion of culture or the arts or with the promotion of sports,

which is approved as an institution of a public character by the Minister, Commissioner or any Sector Administrator on the application of the institution, or which is deemed as an institution of a public character under any written law.

Concessionary tax treatment for donations with benefits

The IRAS has clarified the tax treatment for donations with benefits in its e-Tax Guide "Tax Treatment on Donations with Benefits", published on 1 May 2006. The concessionary tax treatment will apply to qualifying donations made on or after 1 May 2006 to IPCs and registered charities. Prior to the clarification, a donor who received a benefit in return for the donation made was allowed a deduction for the difference between the donation and the cost of the benefit.

Concessionary tax treatment (ie deduction for the full amount donated) will apply to qualifying donations with benefits classified as pure donations. Pure donations are donations where the benefits are treated as having no commercial value if the following conditions are met:

- the benefits have no resale value, and
- the benefits are given in acknowledgement.

The types of benefits deemed by the IRAS not to have a commercial value are:

- charity dinners/charity shows where the donation includes tickets to attend the dinner/show
- complimentary tickets (eg entry to Singapore Zoo), and
- souvenirs or gifts (eg plaques, commemorative books, CDs, goodie bags, etc) where such items are considered as not sold commercially, ie items especially made for the fundraising event and not available for sale in the market, bearing the logo of the fundraiser or carrying the fundraising message.

Where the souvenirs or gifts are commercially available, the donor will be allowed a tax deduction for the difference between the amount donated and the price of the souvenir or gift.

For donations with benefits considered as having a commercial value, a donor will be allowed a tax deduction for the difference between the amount donated and the cost of the benefit. Examples of such benefits and the resulting tax treatments are:

- advertising space — deduction for the difference between the amount donated and the price of the advertising space, and
- charity auction/sales of artefact — deduction for the difference between the amount donated and the market value of the item being auctioned.

The donor is not allowed a tax deduction for any amounts donated for lucky draws.

Unutilised donations

Donations are deductible to the extent of the donor's statutory income for the relevant YA after the deduction of s 10(1)(a) losses and s 37K deduction for qualifying investments, in the case of qualifying start-up companies (s 37(7)). A person who has not utilised the deduction for any donation made during the basis period can carry forward the unutilised amount for up to five YAs (s 37(8)). A company can carry forward unutilised donations if there is no substantial change in the company's shareholders and their respective shareholdings on the relevant dates (s 37(12)) (see Chapter 9 at ¶9-100ff).

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CHAPTER 8

CAPITAL ALLOWANCES

¶8-000 Introduction

The costs of fixed assets are capital in nature and are therefore not deductible for tax purposes. From an accounting angle, an asset is acquired for its service potential, in other words, for the future economic benefits that the asset produces. As the asset is being utilised, the consumption of its economic benefits is recognised by recording depreciation charges. The concept of depreciation involves allocating the cost of an asset over its useful life (period of use) and is normally computed in accordance with each company's accounting policy. These accounting entries are mere book adjustments with no cash flow consequences. Depreciation charges are therefore not tax deductible.

However, the recognition that the wear and tear of fixed assets represents a real business cost has justified the write-off of capital expenditure incurred for certain assets for tax purposes. In this respect, Pt VI of the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act") provides capital allowances (CAs) for capital expenditure incurred on, broadly:

- qualifying buildings and structures (ie land intensification allowances (LIA) under s 18C and industrial building allowances (IBA) under s 16–18)
- plant and machinery (wear and tear allowances under s 19–22), and
- certain intangible assets (writing-down allowances under s 19B, 19C and 19D) used in a trade or business.

The IBA scheme was phased out from 22 February 2010. However, qualifying capital expenditures incurred by businesses on or before 22 February 2010 on the construction or purchase of industrial buildings or structures continue to qualify for IBA, subject to existing IBA rules. See ¶8-170 for details on the phasing out of the IBA scheme.

The LIA scheme came into effect from 1 July 2010 (see ¶8-180).

INDUSTRIAL BUILDING ALLOWANCES

¶8-100 Industrial building allowances

IBA are granted in respect of an **industrial building or structure**. The allowances are given by reference to capital expenditure incurred during a basis period, which is the accounting period ending in the year preceding the year of assessment (YA).

The IBA scheme was phased out from 22 February 2010 (see ¶8-170).

The following paragraphs explain the IBA scheme.

¶8-105 Persons entitled to IBA

IBA are available to a person who has incurred:

(a) qualifying expenditure on a building or structure that the person uses for any of the qualifying trades under s 18(1), or

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(b) qualifying expenditure on a building or structure that is being leased to another person who uses the building or structure for a qualifying purpose.

The person who incurs the qualifying expenditure could be:

(a) the original owner, ie the person who constructed the building or structure

(b) a subsequent owner, ie the person who purchased the building or structure from the original owner

(c) a lessee, ie the person who leased the building or structure from the owner, or

(d) a sub-lessee, ie the person who sub-leased the building or structure from the lessee.

Note that, in the case of a subsequent owner, there are further conditions to be satisfied before any IBA is granted (see ¶8-140).

¶8-110 Definition of industrial building or structure

Section 18(1) defines "industrial building or structure" to mean a building or structure that is in use for any of the qualifying trades below:

(a) *A trade carried on in a mill, factory or other similar premises*

The Act does not define a "mill" or a "factory" and one must therefore take the ordinary meaning of these words. In *Ellerker v Union Cold Storage Co Ltd* 22 TC 195, the judge said:

> "I take it that a factory is a building used for the purpose of manufacture of goods equipped with machinery, and that the word is generally understood in that sense. It is a building where goods are made. The meaning of the word 'mill' is also, I think, plain enough. A mill is a building where goods are subjected to treatment or processing of some sort and machinery is used for that purpose."

In that case, cold stores for meat storage were found to be premises similar to mills since they were equipped with machinery for the purpose of subjecting the meat and other commodities to an artificial temperature.

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(b) *A transport, dock, water or electricity undertaking*

Trades involving internal navigation, tunnelling and bridge construction would qualify under this paragraph.

(c) *A trade which consists of the manufacture of goods or materials or their subjection to any process*

The Act does not define the words "manufacture" or "process"; they must therefore be given their ordinary meaning.

- Manufacture

The "manufacture" of goods would normally involve the creation of something; the shaping, stamping or forming of an object out of something. The essence of manufacture is the making of a thing which is different from that out of which it is made.

The manufacturing process need not produce the end product, provided that it is an essential stage in the final production of that end product. There need not be a change in the substance of the raw material for the process that deals with it to be regarded as a manufacturing process. This is provided that skill has been applied in some way to that raw material and to such dealing, and its actual character, as opposed to its mere substance, has changed (*CIT v Processing Enterprise (PVT) Ltd* 37 SATC 109). Hence, the retreading of tyres is not manufacture but, rather, the repair and remodelling of an old tyre: no new product or article is produced (*FC of T v Jax Tyres Pty Ltd* 85 ATC 4001).

- Processing

The word "processing" generally refers to a technique of preparation, handling or other activity designed to effect a physical or chemical change in an article or substance, other than natural growth. It is a very broad term and, in some trades, it may be difficult to determine whether the goods have been subjected to a process.

The following cases illustrate what constitutes "processing":

- where the process would result in some kind of change in the physical characteristics of the goods

  In *M Ltd* (1951) SB IV, it was accepted by the Board of Review that the stripping, cleaning and inspection of sheets of rubber, the scrapping, weighing, moulding and compressing of sheets into bales, and the coating of the bales with a rubber solution for export had resulted in a change in the physical characteristics of the goods and that such operations had subjected the goods to a process.

- where the process would result in treating the goods in some way

  In *Kilmarnock Equitable Co-operative Society v IRC* (1966) 42 TC 675, the screening and packaging of coal were considered as subjecting the goods to a process. The coal had to undergo some treatment whereby the dross was removed before it was suitable for packing.

- where the process would involve a substantial measure of uniformity of treatment or system of treatments

  In *Vibroplant Ltd v Holland* (1982) STC 164, the taxpayer was carrying on a trade of plant-hire operations. The issue was whether the activities of cleaning, servicing and repairing of hire articles in buildings constructed for that purpose constituted a "process". The High Court judge held that the activities did not (his decision was upheld on appeal):

  > "The essence of the treatment which is provided in these buildings is that it is individual for the particular defects or needs of a particular piece of plant: each item is treated individually. By contrast, in my view, 'process' connotes a substantial measure of uniformity of treatment or system of treatments. I note that a dictionary meaning of 'process' in the

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Shorter Oxford English Dictionary . . . is: 'a continuous and regular action or succession of actions, taking place or carried on in a definite manner: a continuous (natural or artificial) operation or series of operations'."

(d) *A trade which consists in the storage of goods or materials which are used in the manufacture of other goods or to be subjected, in the course of a trade, to any process*

The essential requirement is that the taxpayer making the claim must satisfy the Comptroller of Income Tax (the "Comptroller") that the purpose of his trade is the hiring of storage space to the public.

(e) *A trade which consists of the storage of goods or materials on their arrival in Singapore*

As in para (d), the purpose of the trade should be the hiring of storage space. This facility would seem to be for goods in transit and storage "on arrival" in Singapore.

(f) *A trade in intensive poultry production*

Approval of the Minister of Finance (the "Minister") (on or before 22 May 2010) was necessary before IBA could be claimed. It is understood that the type of buildings concerned were multi-storey buildings used for intensive poultry production.

(g) *A trade by an R&D organisation in carrying out R&D activities for any manufacturing trade or business*

The terms "research and development" (R&D) and "research and development organisation" are defined in s 2. Where a building is used by an R&D organisation which is itself not carrying on manufacturing activities, the building will qualify as an industrial building or structure if the R&D work is done on behalf of a manufacturer or manufacturers. Where R&D services are provided both to manufacturers and non-manufacturers, the Comptroller will accede to a claim for IBA if the work done for the manufacturer exceeds 50% of the total work.

(h) *A building occupied for the purposes of a hotel on the island of Sentosa*

A hotel on Sentosa qualifies as an industrial building or structure if it was approved by the Minister before 1 September 2007.

(i) *A building used for the purposes of a tourist industry (other than a hotel) promotion project*

The building must have had to be approved by the Minister on or before 22 May 2010, subject to any conditions that he might have imposed, before it could qualify as an industrial building or structure. The approval might have been revoked if the taxpayer had failed to comply with any of the conditions. The Comptroller had six years from the date of revocation to recover any tax that would have been payable had the allowances not been made.

(j) *An approved building in use for a prescribed purpose*

Any building or structure that is used for a prescribed purpose and approved by the Minister qualifies as an industrial building or structure. The prescribed purposes are:

- services and activities that relate to agriculture

- services and activities that relate to horticulture
- services and activities that relate to the farming of fish or other forms of aquatic life
- repair or maintenance of aircraft and aircraft components
- services and activities that relate to the auctioning of pigs through electronic means
- provision of telecommunication services to the public by a telecommunication undertaking
- services and activities that relate to the organisation or management of exhibitions and conferences
- postal services provided by a public postal licensee under the *Telecommunications Act (Cap 323, 2000 Revised Ed)*, and
- warehousing provided by the owner of the building or structure as part of his business of providing logistic services or activities.

Other qualifying buildings and structures

The following also qualify as industrial buildings or structures:

- Buildings employed in a qualifying trade for the welfare of workers (s 18(1)). Examples include canteens, restrooms, recreation rooms, washrooms, etc. Thus, if a company, whose business is in the manufacturing and assembling of cars, builds a canteen and restroom block for the welfare of its workers, this block will be regarded as an industrial building or structure even though it is neither attached to nor forms part of the main manufacturing building.
- Structures such as walls, bridges, dams, roads, culverts, fences, wells and tunnels which are used for the purposes of a qualifying trade under s 18(1).
- Childcare facilities at the workplace. Companies are entitled to claim IBA on capital expenditure for renovating and converting part of their premises into a childcare centre.

A part of a trade

A building or structure used for a qualifying activity which is "a part of a trade or undertaking" would qualify for IBA (s 18(4)). In *Kilmarnock Equitable Co-operative Society v IRC* (1966) 42 TC 675, the taxpayer was carrying on a trade of general merchants and only a small part of his total operations involved paper packaging of screened coal. The judge held that as the building on the facts had housed a definitely identifiable part of the taxpayer's industrial operations and a quite separate activity, and that separate activity alone, the taxpayer could claim IBA in relation to that part of his trade. *Kilmarnock* appeared to support the proposition that where industrial

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operations could be identified however small they were as a separate activity, the building used for such an activity would qualify as an industrial building or structure.

The expression "a part of a trade", also found in s 18(2) of the United Kingdom (UK) *Capital Allowances Act 1990*, was more recently examined in *Maco Door and Window Hardware (UK) Ltd v Revenue and Customs Commissioners* [2008] 1 WLR 1790.

In that case, the taxpayer was a UK importer and distributor of hardware manufactured by its Austrian parent company. The hardware was used by other manufacturers in their business. The taxpayer's sole importing and distribution business was carried out of a warehouse in the UK. It sought to claim CAs on the warehouse under s 18(1)(f) of the UK *Capital Allowances Act 1990* on the basis that part of its trade consisted of the storage of goods that were to be used in the manufacture of other goods or materials. The taxpayer contended that the storage activity need not be capable of being a trade in order to qualify for CAs.

The House of Lords, in a split 3-2 decision, held that **"a part of a trade" must have the same characteristics as a qualifying trade** within s 18. In drawing a distinction between a trade and an activity undertaken in the course of a trade, Lord *Walker* stated:

> "To come within section 18(2), 'a part of a trade' must be, not simply one of the activities carried out in the course of a trade, but a visible section of a composite trade which would still be recognisable as a trade if separated from the composite whole: for instance, a garage business that sells cars from its showroom and services and repairs cars in its workshop . . . If the proprietor were to close the showroom, or alternatively were to close the workshop, he would still have part of his original trade."

The taxpayer failed in its claim for CAs as it did not have a trade that consisted of the storage of goods.

Non-industrial use

Any building or structure in use as, or as part of, a dwelling house, retail shop, showroom, hotel (other than a hotel on Sentosa) or office or for any purpose ancillary to any of such purposes would not qualify as an "industrial building or structure" (s 18(3)). The term "retail shop" includes premises in which a retail business is carried on. The word "office" refers to an administrative office and not, for example, a drawing office that forms part of a building in which a company carries on business as structural steel engineers (*Commissioners of Inland Revenue v Lambhill Iron Works Ltd* 31 TC 393).

However, where part of a building or structure is, and part is not, an industrial building or structure, the whole building or structure would qualify as an industrial building or structure if the capital expenditure incurred on the construction or the purchase (ie for the purchase on or after 1 January 2006) of the non-industrial part is not more than 10% of the total capital expenditure incurred on the construction or the purchase of the whole building or structure (s 18(7)).

Where the capital expenditure incurred on the non-industrial part exceeds 10% of the total capital expenditure of the whole building or structure, only the capital expenditure incurred on the qualifying part will be eligible for IBA.

Where the capital expenditure incurred cannot be separately identified, the Comptroller will accept an apportionment by reference to respective floor areas or in such other manner as is reasonable. From 1 January 2006, where it is not practical for the Comptroller to determine the capital outlay for the non-industrial part of the building or structure, the whole building or structure may be considered as an industrial building or structure if (s 18(7A)):

(i) the non-industrial part is not more than 10% of the total floor area of the whole building or structure, or

(ii) the Comptroller is satisfied that it is just and proper to so consider.

Example 1

In the year ended 31 December 2009, A Ltd constructed a two-storey building at a total cost of $460,000. The first storey and half of the second were, and continue to be, used for manufacturing. The other half of the second storey has been used as an office, showroom and retail shop.

Since 25% of the building was used for non-industrial purposes, IBA cannot be claimed on the full cost but only on the qualifying cost of $345,000 (3/4 of $460,000). Where the combined floor area of the office, showroom and retail shop is not more than 10% of the total floor area of the building, the cost of the whole building would qualify for IBA.

¶8-120 Qualifying expenditure

IBA are granted on the capital expenditure incurred on the construction of an industrial building or structure (s 16). The following costs of construction would qualify for IBA:

- all costs on the ordinary work on the site preparatory to laying foundations including costs of preparing, cutting, tunnelling or levelling land in connection with the construction of the industrial building
- architect's fees
- costs of preparing plans in connection with obtaining building approval
- costs of demolishing any existing building
- costs of constructing the building
- expenditure incidental to the construction of the building, such as plumbing, drainage, electric installations, etc, and
- all legal charges, stamp duties, etc, but only to the extent that they relate to the building or structure.

Note that construction costs do not include expenditure incurred for acquiring the site, namely, cost of land and the associated legal charges, stamp duty, etc, connected with the land title. However, certain upfront lease premium paid to the Housing Development Board (HDB) or the Jurong Town Corporation (JTC) are deductible under s 14N (see ¶7-850). Interest expenses incurred in financing construction are not considered part of the qualifying cost for IBA purposes; they may, however, be deducted as an expense if they are wholly and exclusively incurred in the production of the income.

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¶8-130 Initial and annual allowances

Initial allowance (IA)

A person who incurred capital expenditure on the construction of a building or structure which is to be an industrial building or structure occupied for the purposes of a trade is entitled to an IA equal to 25% of the expenditure. For approved hotels on Sentosa and approved buildings in a tourist industry project (other than hotels), the applicable rate is 20% (s 16(8) and 16(9)).

Qualifying trade

An IA will be granted so long as the building or structure is to be in use for a qualifying trade (see ¶8-110). The person need not be carrying on the qualifying trade (s 16(1) and 18(1)).

Where the qualifying trade has already commenced, IAs can be claimed during the period of construction based on the capital expenditure incurred for each basis period. If the building or structure is not put to use for a qualifying trade when it is completed, the Comptroller will make adjustments to any IAs that have been provisionally allowed.

"Separate block of expenditure" approach

Although s 16(1) could be read to mean that IAs are granted only on construction of a new building or structure, the Inland Revenue Authority of Singapore (IRAS) in practice adopts a "separate block of expenditure" approach. Under this approach, any capital expenditure incurred on additions, alterations or improvements to an industrial building already in use is regarded as a separate block of expenditure, which qualifies for IAs.

Expenditure incurred before the commencement of qualifying trade

Where a person about to carry on a qualifying trade incurs capital expenditure on the construction of a building or structure for the purposes of that trade, all qualifying expenditure incurred before the commencement of that trade is treated as being incurred on the date the person commenced to carry on that trade for the purposes of granting an IA (s 16(3)).

Chapter 8

Mitsui-Soko case

The issue whether capital expenditure incurred on the partial construction of a warehouse qualified for IA was considered in *Mitsui-Soko International Pte Ltd v CIT* (1998) MSTC 7,349. The taxpayer had only partly completed the construction of a warehouse by the end of the year in dispute; it had derived only interest income during that year. The taxpayer intended to lease the warehouse (upon completion) to its Singapore subsidiary who would sub-lease it to a logistics company in the Sony group.

The High Court found that the taxpayer had not commenced to carry on any trade; further, it was a mere lessor and was in no position to let out the warehouse during the year. Accordingly, the taxpayer was not entitled to any IA under s 16(1).

The High Court also held that IA could not be set off against interest income in any case. By examining the policy intention for the granting of CAs and the provisions of s 18(1), 23(1) and 23(1A) (as they then read), the High Court held that an initial IBA under s 16(1) "cannot be applied otherwise than against either:

(a) gains or profits from any trade, business or profession (TBP) involving the use of the building or structure in respect of which the allowance is claimed, or

(b) income derived from the letting of the building or structure,

in either case, the building or structure must be used for a purpose or purposes set out in s 18".

Following the decision in *Mitsui-Soko*, the Act was amended to specifically allow any amount of CAs in excess of income from either of the two sources referred to above to be deducted against other sources of income in the calculating statutory income for the YA (see Chapter 9 at ¶9-100ff).

Annual allowance (AA)

An AA computed at 3% of the qualifying expenditure is granted yearly on a straight-line basis until the full expenditure is exhausted. The AA for buildings and structures used for intensive poultry production is 5% while that for a hotel on Sentosa or a building in a tourist industry promotion project (other than a hotel) is 2% (s 16(7), 16(8) and 16(9)).

For an AA to be granted in any YA:

(a) the taxpayer must be entitled to the "relevant interest" in relation to the capital expenditure on the construction of the building or structure at the end of the relevant basis period, and

(b) the building or structure must be in use for one of the qualifying trades at the end of the basis period (s 16(4)).

"Relevant interest", in relation to any expenditure incurred on the construction of a building or structure, means the interest in that building or structure to which the person who incurred the expenditure was entitled when he incurred it (s 18(8)).

Example 2

X constructed a warehouse at a cost of $500,000 and leased this warehouse to Y who used it as an industrial building. During the tenancy, Y expended $100,000 by way of extensions. Y then sub-leased the warehouse to Z who also used the warehouse for a qualifying trade. Z incurred $75,000 on further extensions.

X, Y and Z each had an interest in the warehouse, ie "relevant interest", as each of them had incurred capital expenditure in relation to the warehouse. The qualifying expenditure for IBA was as follows: X $500,000, Y $100,000 and Z $75,000.

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Example 3

XYZ Ltd, a manufacturing company, began the construction of a building in 2008. The building was completed and brought into use on 1 June 2010. XYZ closes its accounts on 31 December each year. The following costs were incurred:

		$
Up to 31 December 2008:	Cost of land	270,000
	Construction works	500,000
	Architects' fees	5,000
	Legal fees (re: title to land)	10,000
Up to 31 December 2009:	Construction works	270,000
	Architects' fees	3,000
Up to 30 June 2010:	Construction works	730,000
	Architects' fees	8,000

Note that the cost of land and legal fees (re: title to land) were not qualifying expenditures. The qualifying expenditures for the industrial building incurred during the following financial years were:

	$
2008	505,000
2009	273,000
2010	738,000
	1,516,000

The amount of IBA claimable by XYZ would depend on whether XYZ had commenced the qualifying activity (ie manufacturing activity) during the construction of the building.

[A] Where XYZ had commenced the qualifying activity before it started the construction of the building

XYZ would be entitled to claim IAs during the periods of construction. On the other hand, AAs could only be claimed on the full qualifying cost in YA 2011 when the building was in use at the end of the basis period ended on 31 December 2010. The IBA for the relevant YAs would be as follows:

		$
YA 2009	IA (25% of $505,000)	126,250
YA 2010	IA (25% of $273,000)	68,250
YA 2011	IA (25% of $738,000)	184,500
	AA (3% of $1,516,000)	45,480
		229,980

[B] Where XYZ had not commenced the qualifying activity when it started the construction of the building

Assume XYZ commenced the manufacturing business when the building was put into use on 1 June 2010. For YA 2009 and YA 2010, XYZ would not be entitled to claim IAs for qualifying expenditure incurred during the periods of construction. All qualifying expenditures incurred during the periods of construction were deemed to be incurred on the date the manufacturing business commenced (s 16(3)), ie all qualifying expenditures were deemed to be incurred on 1 June 2010. The IBA could first be claimed in YA 2011 as follows:

		$
YA 2011	IA (25% of $1,516,000)	379,000
	AA (3% of $1,516,000)	45,480
		424,480

50-year restriction

The 50-year restriction applies to qualifying capital expenditure incurred before 1 January 2006. AAs will not be granted to any person for any YA after the end of the 50th year from which the building or structure was first used (s 16(6)). This 50-year restriction does not apply to an industrial building or structure where:

(i) the capital expenditure on its construction was incurred on or after 1 January 2006, or

(ii) its sale or purchase agreement was entered into on or after 1 January 2006 (s 16(6A)).

Temporary disuse

A building or structure will qualify as being "in use" for purposes of s 18(1) if it has fallen into temporary disuse provided that during the period of temporary disuse, it is constantly maintained in readiness to be brought back into use (s 18(2)).

It is a question of fact whether or not a building is temporarily out of use. Thus, where a rubber mill is shut down for two or three years during a slide in rubber prices but the owner continues to maintain the mill in good condition and operational readiness, AAs will be granted as if the mill was in use.

¶8-140 Purchaser of industrial building or structure

New industrial building or structure

A taxpayer who acquires an industrial building or structure from the person who constructed it is deemed to have incurred capital expenditure on its construction and is entitled to claim IAs if (s 16(12) and 16(13)):

(a) the building or structure has not been used previously by any other person

(b) the building or structure must be acquired from the person who constructed it, and

(c) no IAs have been claimed by the person who constructed it.

The purchaser of a new building or structure is entitled to AAs as discussed in ¶8-130.

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New building or structure purchased on or after 1 January 2006

The IA claimable on a new building or structure acquired on or after 1 January 2006 is based on the net purchase price (s 16(13) and 18(8)). The date of the sale and purchase agreement is taken as the date of purchase of the building or structure.

Under the transitional rules, the IA and AAs can be claimed on qualifying capital expenditure incurred on or after 23 February 2010 on the purchase of a new industrial building where:

- the option to purchase was granted on or before 22 February 2010, or
- the agreement to purchase was signed on or before 22 February 2010 (s 18B(3)).

New building or structure purchased before 1 January 2006

For new industrial buildings or structures acquired before 1 January 2006, the IA is based on the lower of the cost of construction or the net purchase price (s 16(12)). A problem may arise when determining the cost of construction incurred by the seller. The seller of the building or structure may not wish to disclose the construction costs to the buyer. It will, therefore, be up to the claimant to satisfy the Comptroller of the costs after having ascertained these from the seller. The Comptroller has ruled that, where industrial buildings or structures are purchased from the JTC, the cost of construction may be taken to be 95% of the net purchase price.

Where the purchase of a new industrial building or structure made before 1 January 2006 is in respect of a leasehold interest, that leasehold interest must be 25 years or more in order to claim IAs (s 16(12)).

Second-hand industrial building or structure purchased on or after 1 January 2006

The purchaser of a used building will not be entitled to any IA even if the building is being used for a qualifying trade. AAs based on 3% of the capital expenditure incurred on the purchase of the used building can be claimed where the building is being used for a qualifying trade (s 16(6B)(b)).

Under the transitional rules, AAs can be claimed on qualifying capital expenditure incurred on or after 23 February 2010 on the purchase of a second-hand industrial building where:

- the option to purchase was granted on or before 22 February 2010, or
- the agreement to purchase was signed on or before 22 February 2010 (s 18B(5)).

Second-hand industrial building or structure purchased before 1 January 2006

IAs cannot be claimed for the purchase of any used building. A person who purchases a used building before 1 January 2006 is entitled to claim AAs if the building is used by the person for a qualifying trade and the building was previously used as an industrial building. The AA is computed by reference to the residue of expenditure (ROE) immediately after the sale (s 16(5)). No AA will be available after the end of the 50th year from which the building was first used.

The amount of AA that the purchaser is entitled to is the higher of:

(a) the ROE divided by the number of YAs for which the purchaser is, or may be, entitled to AAs ending with the 50th year after the year in which the building or structure was first used:

$$\text{ROE} \times \frac{1}{\text{Number of years from first YA for which purchaser is entitled to AA up to 50th year after building first used}}\text{, or}$$

(b) 3% of the ROE after the sale.

The total amount of AAs allowed to a purchaser of an industrial building or structure cannot exceed the amount of the ROE immediately after the purchase.

The ROE is essentially the qualifying expenditure that has not yet been allowed or deemed allowed. "Residue of expenditure" is defined as the amount of capital expenditure incurred on the construction of a building or structure reduced by any IA made, any AA made and any balancing allowances granted; and increased by any balancing charges made (s 18(8)). For any year in which no IA or AA has been made, a notional allowance equal to 3% of the expenditure is to be written off in calculating the ROE (s 18(9)).

Applying the s 18(8) definition of "residue of expenditure", the expenditure of a used (second-hand) industrial building to the purchaser generally works out to be the cost of construction or the net purchase price paid, whichever is the lower. For example, if the purchase price of a second-hand building or structure is $5m and its original cost of construction is $2m, the ROE immediately after the sale will be $2m. This is the amount to which the formula in s 16(5) is applied to calculate the AAs to the purchaser.

Example 4

K Ltd constructed and commenced using a factory for a qualifying trade in 1998. As the building was first used in 1998, initial and annual IBA would have been first granted in YA 1999. The 50th year after its first use will be 2047 and the last YA in which IBA could be granted is YA 2048. The building was subsequently sold to L Ltd for $2.8m in the year 2013. Both K Ltd and L Ltd close their accounts on 31 December.

Purchase by L Ltd on or after 1 January 2006

As L Ltd had purchased the building in 2013, L Ltd's AA entitlement for YA 2014 and subsequent years would be based on 3% of the purchase price of $2.8m, ie $84,000. The 50-year restriction does not apply to a purchase made on or after 1 January 2006.

Purchase by L Ltd before 1 January 2006

Now assume instead that L Ltd had purchased the building in March 2005 for $2.8m and that the ROE for the building immediately after the sale was $2m. Because the 50-year restriction rule applies, L Ltd would be able to claim AAs for 43 years from YA 2006 up to YA 2048.

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L Ltd's AA entitlement for YA 2006 and following YAs is the greater of the following:

(a) $\frac{1}{43} \times \$2,000,000 = \$46,512$

(b) $3\% \times \$2,000,000 = \$60,000$

The AA for YA 2006 and subsequent years would be $60,000.

¶8-150 Balancing allowance and charge

A balancing adjustment can either be a **balancing allowance (BA)** or **balancing charge (BC)**. It has to be calculated when any of the following events occur in the basis period for the YA while the building or structure is an industrial building or structure or after it has ceased to be one (s 17(1)):

- the relevant interest in the building or structure is sold — the time of sale is determined by reference to the time of completion of the sale
- a leasehold relevant interest comes to an end (except for cases where the termination occurs as a result of the lessee acquiring the freehold interest), or
- the building or structure is demolished, destroyed or ceases to be in use altogether.

When any of these events occur, the ROE of the building or structure immediately before the event is compared with any receipt (RC) arising therefrom (eg sale or salvage proceeds, insurance or compensation monies).

A BC will arise where the RC is greater than the ROE (s 17(5)). The BC represents a recovery of excess CAs granted and is deemed to be income under s 10(4) and therefore subject to tax. However, the amount of BC is restricted to the total amount of IA and AA that the person has been granted on the building or structure (s 17(6)). The BC restriction rule in effect excludes capital gains from income taxation.

On the other hand, a BA will arise where the ROE is greater than the RC (s 17(4)). Essentially, a BA is a kind of CA granted to the taxpayer who had previously been granted less CAs (IA + AA) in total than his net expenditure (ie cost less RC) on the asset.

Chapter

Example 5 illustrates the BA and BC concepts.

Example 5

Company ABC incurred $1,516,000 on the construction of a building that was used for a qualifying activity. Company ABC had claimed IBA for one year before it sold the building to Company PQR. Assume the sale price of the building (excluding the cost of land) was as follows:

(a) $1,050,000

(b) $1,275,000, or

(c) $1,600,000.

The ROE would be as follows:

		$	$
Construction cost of building			1,516,000
Less:	IA — 25% × $1,516,000	379,000	
	AA — 3% × $1,516,000	45,480	
			424,480
ROE (ie written-down value)			1,091,520

	(a)	(b)	(c)
	$	$	$
ROE	1,091,520	1,091,520	1,091,520
Less: Sale price	(1,050,000)	(1,275,000)	(1,600,000)
BA	41,520		
BC		183,480	
BC (restricted)			424,480

In situation (a)

Company ABC's net expenditure on the building was ($1,516,000 – $1,050,000) = $466,000. The total amount of IA and AA granted = $424,480.

Company ABC will be granted BA of $41,520 ($466,000 – $424,480), the amount of CAs that it was "under-granted" previously.

In situation (b)

Company ABC's net expenditure on the building was ($1,516,000 – $1,275,000) = $241,000. The total amount of IA and AA granted = $424,480.

Company ABC will be taxed on BC of $183,480 ($424,480 – $241,000). This amount of $183,480 represents a recovery of excess CAs granted.

In situation (c)

Company ABC made a capital gain of $84,000, being the excess of the sale price of $1,600,000 over cost of $1,516,000. The total amount of IA and AA granted = $424,480.

Although the amount of BC calculated would have been $508,480 (ie sale price $1,600,000 – ROE of $1,091,520), it must be restricted to $424,480. In effect, the BC restriction rule has excluded the difference of $84,000, being a capital gain, from income taxation.

Situations where balancing adjustments would not arise

In the following situations, BA will not be available to a person:

(a) on the sale of the relevant interest in the building or structure where the person cannot prove to the Comptroller's satisfaction that the value of the building or structure to the person is less than the capital expenditure incurred in its construction reduced by the amount of any IAs and AAs made (including, where applicable, an amount of 3% notional allowance for each year in which no IA or AA was made), and

(b) where the relevant interest in the building or structure is not sold, but the building or structure is, or would be, redeveloped for any use other than as an industrial building or structure (s 17(3)).

In the case of industrial buildings constructed prior to 1 January 2006, no BA or BC is to be made if any of the events occurs "after the end of the 50th year after that in

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which the building or structure was first used" (s 17(2)). This is illustrated in Example 6. Note that the 50th year after first use is determined by reference to the first user.

Example 6

A manufacturer, with accounting year ending 31 December, purchased a new factory building and put it into use in June 2005. The first YA in which the manufacturer can claim IBA was YA 2006. The 50th year of use would be 2054. Accordingly, the last YA for claiming IBA would be YA 2055. No BA or BC would arise if any of the events mentioned in s 17(1) happened after 31 December 2054.

Sales between associated persons

Special rules may apply to the sale of an industrial building or structure where:

- the buyer and the seller are under common control (eg subsidiary companies in a group), or
- one of them has control over the other (eg where the sale is one to a private company by an individual who is the majority shareholder).

In such cases, the buyer and the seller may make an election under s 24. Under s 24(3), the ROE on the construction or purchase of the building or structure immediately before the sale is deemed to be the transfer price qualifying for IBA in the hands of the buyer as if the sale had not taken place. Consequently, no BA or BC would arise to the seller. The buyer would claim the AA based on this deemed transfer price for the remaining years.

¶8-160 Summary of IBA for purchase of building

The following table compares the tax treatment for purchases of new and used buildings on or after 1 January 2006 with that for purchases before 1 January 2006:

*Purchases on or after 1 January 2006**	*Purchases before 1 January 2006*
• IA and AA are granted to purchasers of new buildings, including leasehold interest of less than 25 years.	• IA and AA are granted to purchasers of new buildings, including leasehold interest of at least 25 years (s 16(12)).
• For a new purchased building, IA and AA are computed based on the purchase price, without reference to the cost of construction.	• For a new purchased building, IA and AA are computed based on the cost of construction.
• AA is granted to the purchaser of a used building if the current use of the building is for a qualifying trade. It is not subject to the requirement that the building was previously used as an industrial building.	• AA is granted to the purchaser of a used building provided the building was previously used as an industrial building and the purchaser is using the building as an industrial building (s 16(5)).
• For purchased buildings (both new and used), AA is computed based on the purchase price, without reference to the cost of construction.	• For the purchase of a used building, AA is computed using the ROE of the building, which is derived from the cost of construction of the building (s 18(8)).
• The granting of AA is not subject to the 50-year restriction.	• AA is not granted for a building after 50 years since it was first used (s 16(6)).

* The date of purchase is the date of the sale and purchase agreement.

Chapter 8

¶8-170 Phasing out of IBA

The IBA scheme was phased out from 22 February 2010. Qualifying capital expenditures incurred by businesses on or before 22 February 2010 on the construction or purchase of industrial buildings or structures continued to qualify for IBA, subject to existing IBA rules (see IRAS e-Tax Guide "Phasing Out Industrial Building Allowance", published on 28 April 2010).

With the phase out, IBA was no longer granted for capital expenditures on the construction or purchase of industrial buildings or structures incurred after 22 February 2010, except in the following specified scenarios (**transitional rules**):

(a) Purchase of industrial buildings or structures where the option to purchase was signed on or before 22 February 2010:

The purchase price incurred would qualify for IBA, subject to existing IBA rules.

(b) Construction of new industrial buildings or structures on land for which an application to bid, buy or lease the land from the Government was submitted, or for which an option to purchase the land was signed with the private industrial landlord, on or before 22 February 2010, and the development application to build the industrial buildings or structures on the land was submitted to the Urban Redevelopment Authority (URA) by 31 December 2010:

IBA could be claimed on qualifying capital expenditures incurred up till the earlier of the date of Temporary Occupation Permit (TOP) or the end of the basis period for YA 2016, subject to existing IBA rules.

(c) Extension or alteration works on existing industrial buildings or structures, or conversion works on existing non-industrial buildings or structures to convert the buildings or structures to industrial buildings or structures, for which a qualified person had been engaged on or before 22 February 2010 to carry out the works and the development application for such works, was submitted to the URA by 31 December 2010:

Qualifying capital expenditures incurred up till the earlier of the date of TOP or the end of the basis period for YA 2016 would qualify for IBA, subject to existing IBA rules.

(d) Renovation works (that did not require a development application) on existing industrial buildings or structures, or on existing non-industrial buildings or structures to convert them to industrial buildings or structures; and a building/renovation contractor had been engaged on or before 22 February 2010 to carry out the renovation works:

Qualifying capital expenditures incurred up till the earlier of the date of completion of renovation works or the end of the basis period for YA 2016 would qualify for IBA, subject to existing IBA rules.

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LAND INTENSIFICATION ALLOWANCE

¶8-180 Land intensification allowance

To promote the intensification of industrial land use towards more land-efficient and higher value-added activities, the LIA incentive was introduced. Businesses may claim LIA on qualifying capital expenditures incurred for the construction, renovation or extension of a qualifying building or structure. Administered by the Economic Development Board (EDB), the LIA incentive will be in place for five years from 1 July 2010 to 30 June 2015.

(See EDB circular "Land Intensification Allowance Incentive", published on 27 October 2014.)

The LIA is available to businesses in industry sectors which have large land takes and low Gross Plot Ratios (GPR) and which use the LIA building or structure for qualifying activities listed in Annex A of the EDB circular.

As announced in the 2014 Budget, to continue encouraging businesses to optimise land use, the LIA incentive will be extended for five years to 30 June 2020. The LIA incentive will also be extended to:

- the logistics sector, and
- businesses carrying out qualifying activities on airport and port land.

To encourage businesses to continue to intensify their land use, especially those in the top quartile of the relevant GPR benchmark, a new condition requiring existing buildings that have already met or exceeded the GPR benchmark to meet a minimum incremental GPR of 10% will be introduced. All other existing conditions of the LIA incentive remain unchanged.

Qualifying building or structure and qualifying activities

The building or structure must be constructed on land that has been zoned as Business 1 or Business 2 (excluding Business 1 White and Business 2 White), or airport and port land (from 22 February 2014) under the URA Master Plan. The building or structure has to meet the GPR benchmark relevant to the industry sector of the building user. The GPR benchmark is based on that applicable at the time when the taxpayer submits its development application for the building or structure to the URA.

The user of an approved LIA building or structure must carry out one of the qualifying activities (see Annex A of the EDB circular "Land Intensification Allowance Incentive", published on 27 October 2014; and (from 22 February 2014) Annex A of the EDB supplementary circular "Enhancements to the Land Intensification Allowance Incentive", published on 22 July 2014) as its principal activity in the building or structure. At least 80% of the total floor area of the approved LIA building or structure must be used by a single user for carrying out the principal activity.

The key qualifying conditions of the LIA incentive are summarised in the table below:

Qualifying conditions for LIA incentive	From 23 February 2010 to 21 February 2014	From 22 February 2014 to 30 June 2010
Qualifying building or structure	• Built on industrial B1/B2 land	• Built on industrial B1/B2 land • Built on Airport/Port land
Qualifying trade or business	• Specified manufacturing activities	• Specified manufacturing activities • Specified logistics activities
Qualifying intensified use of the land	• Prescribed GPR benchmarks for specified manufacturing activities	• Prescribed GPR benchmarks for specified manufacturing activities • Prescribed GPR benchmarks for logistics activities • Incremental 10% GPR applies to buildings or structures which already have met the Prescribed GPR benchmarks

The prescribed GPR benchmarks applicable from 22 February 2014 are summarised in Annex A of the EDB supplementary circular "Enhancements to the Land Intensification Allowance Incentive", published on 22 July 2014.

Renovation or extension of existing building or structure

Subject to approval, the owner or a buyer of an existing building or structure is eligible for LIA if:

- he incurs additional capital expenditure to renovate or extend the existing building or structure to increase the building or structure's GPR, and
- the new GPR of the building or structure meets or exceeds the relevant GPR benchmark.

The LIA will be computed based on the qualifying capital expenditure incurred on the renovation or extension works excluding the purchase price of the existing building or structure.

Qualifying expenditure

The following capital expenditures qualify for LIA if incurred on approved construction or renovation of a building or structure between 23 February 2010 and the completion date of that project (s 18C(12)):

(a) cost of feasibility study on the layout of the building or structure

(b) design fees of the building or structure

(c) cost of preparing plans for obtaining approval for the building or structure

(d) piling, construction, renovation or extension costs

(e) demolition costs of an existing building or structure

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(f) legal and other professional fees in relation to the approved construction, renovation or extension, and

(g) stamp duties payable in respect of the title of the building or structure.

Initial and annual allowances

For LIA purposes, IA of 25% of the qualifying capital expenditure on the approved construction or renovation will be granted in the YA relating to the basis period in which the capital expenditure was incurred (s 18C(3)).

AA of 5% will be granted on the above qualifying capital expenditure if:

(a) the building or structure is in use at the end of the basis period for any YA for the specified trade or business (s 18C(4)), and

(b) at least 80% of the total floor area of the building or structure must be used at the end of the basis period for that YA by one person carrying out the qualifying activity (s 18C(5)).

Under the LIA incentive, the qualifying expenditure on a building or structure is written down over a shorter period of 15 years as compared to 25 years under the IBA scheme.

Example 7

Company ABC incurred the following qualifying capital expenditure on the approved construction of a building for LIA purposes:

		$
Year ended:	31 December 2013	2,000,000
	31 December 2014	3,000,000

The building was completed and put into use in November 2014 Assume Company ABC is already carrying on a business, the GPR benchmark was met and 85% of the total floor area was used for its qualifying activity. The LIA claimable for the relevant YAs is as follows:

		$
YA 2014	IA – 25% × $2,000,000	500,000
YA 2015	IA – 25% × $3,000,000	750,000
	AA – 5% × $5,000,000	250,000
YA 2016 to YA 2029	AA – 5% × $5,000,000 × 14 years	3,500,000
	Total LIA	5,000,000

Unutilised LIA

In any YA where the taxpayer has insufficient income to absorb the initial and/or annual LIA, the unabsorbed LIA can be utilised subject to certain conditions as follows:

(a) transfer the amount for set-off against income of member companies under the Group Relief System

(b) carry back for set-off against prior year's income under the Carry-back Relief Scheme, and/or

(c) carry forward and set off against future year's income.

(See Chapter 9 at ¶9-100ff).

Changes to use of LIA building or structure or when the GPR condition is not met

A person has to notify the EDB if, at any time, there is still a balance of qualifying capital expenditure remaining to be claimed and the person has:

(a) ceased to use permanently the LIA building or structure, or

(b) ceased to use permanently the LIA building or structure for the approved qualifying activity.

In such instance, no further AAs will be granted and the LIA incentive will be terminated.

The person has to notify the EDB if, at any time, there is still a balance of qualifying capital expenditure remaining to be claimed and the person has changed the predominant use of the LIA building or structure from one qualifying activity to a different qualifying activity. If approval is granted by the EDB, the person can continue to claim AAs under the new qualifying activity.

Paragraph 19 of the EDB circular states that "when the approved LIA building is sold at any time when there is still a balance of qualifying capital expenditure remaining to be claimed or after the qualifying capital expenditure has been fully claimed, any balance of the qualifying capital expenditure still remaining will be disregarded and there will not be any balancing adjustment on the seller of the building".

A person has to notify the EDB where the LIA building is transferred to an amalgamated company under a qualifying amalgamation under s 34C. The amalgamated company is allowed to claim AAs until all remaining qualifying capital expenditure is fully claimed, subject to the amalgamated company satisfying the same conditions for the LIA incentive.

PLANT AND MACHINERY

¶8-210 Meaning of plant and machinery

A person who has incurred capital expenditure on the provision of plant or machinery for the purposes of his TBP qualifies for CAs on that expenditure (s 19(1)).

The terms "plant" and "machinery" are not defined in the Act. Although it is usually not difficult to determine what "machinery" is, the question of what is "plant" is less clear and has been the subject of much case law. In a recent important case, *ZF v CIT* (2011) MSTC ¶70-008; [2010] SGCA 48 (see Singapore tax cases on "plant or machinery" below), the Court of Appeal in Singapore adopted a somewhat different test of what constitutes "plant" from the two tests used by the High Court, namely the "functional" test (also known as the "business use" test) and the "business premises" test. Both these tests continue, however, to form the bases upon which the IRAS has published its guidance notes on what constitutes "plant" (see IRAS e-Tax Guide, "Machinery and Plant: Section 19/19A of the Income Tax Act", updated on 20 April 2011).

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In this part, the "business use" test and the "business premises" test are first explained in the context of the UK tax cases that gave rise to them. Next, we examine *ZF* and *IH*, both Singapore cases concerning the issue of "plant". We then list some items which qualified as "plant" and some other items which did not qualify as "plant" based on common tax law cases. Finally we reproduce (from the e-Tax Guide above) the two lists of examples of items that the IRAS would regard as "plant" and as "not plant".

What is "plant"

The classic definition of "plant" was first enunciated by *Lindley* LJ in *Yarmouth v France* (1887) 19 QBD 647 as follows:

> "in its ordinary sense, it includes whatever apparatus is used by a businessman for carrying on his business — not his stock-in-trade, which he buys or makes for sale; but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business."

Interestingly *Yarmouth* concerned the definition of "plant" under the UK *Employers' Liability Act 1880*; it was not a tax case. Nevertheless, subsequent UK tax cases on "plant" have endorsed the above definition.

Essentially, to determine whether an item can be considered "plant", there are three elements to consider:

(a) As stock-in-trade is not kept for permanent employment in the business, it cannot be considered as plant.

(b) The item is an apparatus used by a businessman for carrying on his business (the "business use" test).

(c) The item must be an "apparatus" which excludes the place in which the business is carried on. Under the "business premises" test, an item that performs simply and solely the function of "housing" the business or providing shelter is not plant (*Cole Bros v Phillips* [1981] STC 671).

An item that is not stock-in-trade can be regarded as plant only if it satisfies both the "business use" and the "business premises" tests. Whether an item passes both the tests is a question of fact and degree. An important consideration is the nature of the business being carried out.

"Business use" test

The "business use" test first gained prominence in *IRC v Barclay Curle & Co Ltd* (1968) 45 TC 221. In that case, a dry dock installation was held to be plant and the whole of the expenditure, including that incurred to excavate the basin and build the dry dock, qualified for CAs. Lord *Reid* said:

> "It seems to me that every part of this dry dock plays an essential part in getting large vessels into a position where work on the outside of the hull can begin. And that it is wrong to regard either the concrete or any other part of the dock as a mere setting or part of the premises in which this operation takes place. The whole dock is, I think, the means by which, or plant with which, the operation is performed."

In *Schofield v R & H Hall Ltd* (1974) 49 TC 538, it was held that the grain silos in question were plant as they were primarily used, not for storing the grain, but for receiving grain from ships and discharging it into lorries. Specifically, the silos were large concrete structures used for sucking grain up from ships into bins from which it was released onto the lorries. The silos effectively carried out those functions plus the cooling, turning over and fumigation of the grain. Simple storage itself was a "trifling part" of the silos' function.

The above two cases illustrate the principle that business premises are not plant "except in the rare case where the premises are themselves plant" (Lord *Lowry* in *IRC v Scottish & Newcastle Breweries Ltd* [1982] STC 296).

In *Cooke v Beach Station Caravans Ltd* (1974) 49 TC 514, a heated swimming pool and paddling pool were held to qualify as plant to an operator of caravan parks. The pools were in effect part of the apparatus of the caravan park; they were not merely "where it's at".

In contrast, in *Benson v Yard Arm Club Ltd* (1979) STC 266, it was held that an old barge kept moored and used as a floating restaurant was not plant. In his judgment, *Buckley* LJ made a distinction between "something by means of which the business activities are in part carried on" and a structure which "plays no part in the carrying on of those activities, but is merely the place within which they are carried on".

"Business premises" test

Even if an item has passed the "business use" test, it has to satisfy the "business premises" test before it can be regarded as plant. The following UK tax cases are now looked at in turn:

- *J Lyons and Co Ltd* — lamps
- *John Good & Sons Ltd* — movable partitions, and
- *Scottish & Newcastle Breweries Ltd* and *Wimpy International Ltd* — expenditure incurred for the creation of an atmosphere or ambience.

J Lyons and Co Ltd

J Lyons and Co Ltd v Attorney-General (1944) Ch 281, *Uthwatt* J distinguished "plant" and "setting" as follows:

> "the question at issue may, I think, be put thus: Are the lamps and fitments properly to be regarded as part of the setting in which the business is carried on or as part of the apparatus used for carrying the business? . . . Lamps are required to enable the building to be used where natural light is insufficient . . . In my opinion, these lamps are not, in these circumstances, properly described as plant, but are part of the general **setting** in which the business is carried out [emphasis added]."

In *Lyons*, although the lamps used in the premises were exclusively devoted to the business, their presence was not dictated by the nature of the trade. In other words, the lamps would have been necessary to light up the building regardless of the nature of the business.

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The judge had also used the word "setting" in a narrow sense, something mutually exclusive from plant. In the next case, however, the word "setting" was used in a broader sense that possibly encompassed "plant". The Singapore Court of Appeal in *ZF* noted this inconsistency in the use of terminology among the UK tax cases and thus considered the formulation of the "business premises" test to be unhelpful in determining whether an asset qualifies as plant.

John Good & Sons Ltd

In *Jarrold v John Good & Sons Ltd* (1963) 40 TC 681, movable partitions situated in an open plan office were held to qualify as plant even though they were in a sense "setting". Per *Pearson* LJ:

> "the respondent company, instead of having internal walls in their office building, needs to have, and does have, for the special requirements of their business, movable partitioning by means of which they can, in response to changing volumes of business in their departments or to the cessation of departments . . . rapidly and cheaply and without much interruption of business alter the subdivisions of their office building. On that view of the facts, the partitioning undoubtedly can be regarded as 'plant'."

In Singapore, if office partitions form an integral and fixed part of the building, a claim for CAs will not be accepted. However, demountable partitions, ie partitions that can be moved from one position to another, qualify for CAs. In *S Ltd* (1953) SB VIII, it was held that expanding metal partitions installed in a godown in Singapore did not qualify for CAs as they were not portable and were fixed to the floor, or to the floor and ceiling.

Scottish & Newcastle Breweries Ltd

In *IRC v Scottish & Newcastle Breweries Ltd* (1982) STC 296, the company carried on business as hoteliers and operators of licensed premises. It incurred capital expenditure on electric light fittings, electric wiring, décor and murals, and metal sculptures. The wall décor consisted of pictures, plaques, tapestries, plates, horse harnesses, stags' heads, metalware, swords, axes, bagpipes, and deer skins. All these items were either screwed to the wall and easily removed or hung on the wall and movable. The murals were fibre glass, leather or metal sculpture panels that were screwed to the wall and movable. There were two metal sculptures representing seagulls in flight; one of them hung from the ceiling to which it was bolted and was supported by steel rods. The other was a standing fixture permanently fixed to the forecourt. It was held that all these items were plant because the creation of atmosphere was an important function of the trade of a hotelier and was a means to an end in the carrying on of such a trade.

Lord *Wilberforce* said:

> "In the end, each case must be resolved, in my opinion, by considering carefully the nature of the particular trade being carried on, and the relation of the expenditure to the promotion of the trade . . . It seems to me, on the Commissioners' findings, which are clear and emphatic, that the taxpayer company's trade includes, and is intended to be furthered by, the provision of what may be called 'atmosphere' or 'ambience', which (rightly or wrongly) they

think may attract customers. Such intangibles may in a very real and concrete sense be part of what the trader sets out, and spends money to achieve. A good example might be a private clinic or hospital, where quiet and seclusion are provided, and charged for accordingly. One can well apply the 'setting' test to these situations. The amenities and decoration in such a case as the present are not, by contrast with the *Lyon*'s case, the setting in which the trader carries on his business, but the setting which he offers to his customers for them to resort to and enjoy."

Lord *Lowry* highlighted the importance of not equating "setting" with "premises":

> ". . . the Crown's primary fallacy, in my opinion, was to identify 'setting' inevitably with 'premises' or 'place' . . . And even if one assumes that 'the setting' is the same thing as 'the premises', it is fallacious to say that articles used to adorn the setting thereby ceased to be apparatus used by the taxpayer company for carrying on their business . . ."

Wimpy International Ltd

In *Wimpy International Ltd v Warland* (1988) 61 TC 51, the taxpayer was an operator of fast food restaurants. It was held that the disputed items, which included shop-fronts, floor and wall tiles, false ceilings, floors and stairs were not plant because they formed part of the premises and were not items which merely "embellish" the premises. Only the light fittings were held to be plant.

In the High Court, *Hoffman* J (as he then was) quoted Lord *Lowry* in *Scottish & Newcastle Breweries* [1982] STC 296 at 304:

> "something which becomes part of the premises, instead of merely embellishing them, is not plant, except in the rare case where the premises are themselves plant, . . ."

The question of how one applies the "premises" test to items which were not incorporated as part of the original building but have been added by way of subsequent improvement was also considered. The question is whether it would be more appropriate to describe the item as having become part of the premises than as having retained a separate identity. This is a question of fact and degree, to which some of the relevant considerations will be:

- whether the item appears visually to retain a separate identity
- the degree of permanence with which it has been attached
- the incompleteness of the structure without it, and
- the extent to which it was intended to be permanent or whether it was likely to be replaced within a relatively short period.

Applying these principles to the facts in *Wimpy*, *Hoffman* J held that only the light fittings were plant. The Commissioners had found that the taxpayer considered the volume of light important for the purposes of their business and that it had been progressively increased for business reasons. The light fittings could not, therefore, have been for general illumination only but were apparatus used in the trade, ie plant.

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Hoffman J's decision was upheld in the Court of Appeal ([1989] STC 273).

Per *Fox* LJ at 278–280:

> "I would agree with *Hoffman* J that the question is whether it would be more appropriate to describe the item as part of the premises rather than as having retained a separate identity. It seems to me that items such as fixed floor tiles and shop fronts are more naturally to be regarded as part of the 'housing' of the business than as mere embellishments having a separate identity."

Singapore tax cases on "plant or machinery"

ZF v CIT

In *ZF v CIT* (2011) MSTC ¶70-008; [2010] SGCA 48, the Court of Appeal reversed both the decisions of the High Court and the Board of Review and held that portable and demountable pre-fabricated dormitories are "plant" and qualify for CAs under s 19 and 19A.

ZF is in the business of providing accommodation on a temporary basis and therefore requires the dormitories facility to be portable or demountable. ZF was awarded a contract to build and operate workers' dormitories on a site leased from the Building and Construction Authority (BCA). The lease agreement was for a period of three years and could be extended for another six years at the discretion of the BCA. The BCA also has the right to terminate the lease by giving a 90-day notice in the event the site was requisitioned for industrial or other use.

In the light of these time constraints, ZF built dormitories that were not permanent structure. They were pre-fabricated structures that could be easily removed and re-used on another location. ZF claimed only the movable parts of the dormitories as "plants" and excluded all expenditure incurred on the permanent structures such as foundational works for the dormitories and a brick building used as a canteen for the workers.

The Court of Appeal held the view that "**there is just one basic and overarching test — whether the item concerned is utilised for the purposes of the trade or business as 'plant' or as a building**" (building being conceptually mutually exclusive from plant). The Court then set out the framework for ascertaining whether an asset constitutes a building or a plant by listing the following main criteria:

(a) the exact operational role of the asset in the taxpayer's business

An asset which operates as a large piece of equipment cannot be said to be a building or structure. If a very large asset can be considered both equipment and the setting or premises in which the business is carried on (such as the grain silos in *Schofield*), the question then is whether the asset is more appropriately described as equipment (and hence plant) or as a building (and thus not plant). This would in turn depend on the extent to which the asset plays the role of equipment in the taxpayer's business, and the other facts indicated below.

(b) the physical nature of the asset which would encompass, for example, the size, shape, durability as well as the material it is constructed of

(c) the intention of the taxpayer with regard to the use and the location of the asset, and

(d) whether the asset concerned, although not a building proper, could be regarded as inextricably connected with a building.

Under this criterion, the Court of Appeal regarded as "instructive" the observations of *Hoffman* J in *Wimpy* concerning the issue whether it would be more appropriate to describe the item as having become part of the premises than as having retained a separate identity (reproduced under *Wimpy* above).

Taking all the above factors into account, the Court of Appeal also gave some examples, by way of illustration only, of what might (or might not) constitute "buildings". Although *obiter*, the examples are instructive and therefore reproduced in full here:

"(a) A crane used to lift and lower bulky objects would qualify as 'plant' even if it is permanently fixed to a certain spot and is constructed such as to last for decades. This is because it obviously functions as a giant piece of equipment or machinery and cannot be likened to a building or structure.

(b) Curtains and movable partitions in a shophouse or office would also be 'plant' even if their sole purpose was simply to exist as part of the premises because they cannot be said to physically resemble buildings or structures in any way, nor would they be sufficiently connected with the shophouse or office to form an inextricable part of the building.

(c) An office put up at a construction site and made of brick and mortar would be considered a building instead of 'plant', even if the contractor or developer intended to demolish it in as premises, is constructed of permanent materials, and so obviously resembles a building.

(d) Wooden sheds and storehouses located permanently at a site would also be considered buildings instead of 'plant'. Although constructed of less durable materials than concrete buildings, they have the sole function of housing and are also not meant to be moved around. Thus, they are also just as permanent as concrete buildings.

(e) Tents used for accommodation and shelter are definitely 'plant'. They have very little resemblance to actual buildings or structures and are meant to be moved from place to place."

(Source: [2010] SGCA 48 at para 66.)

On finding of facts, the Court of Appeal considered that even though the dormitories were not large pieces of equipment and also resembled buildings from a physical perspective, they were not made of such lasting materials so as to fall inextricably on the buildings' side of the boundary. Furthermore, ZF may have to dismantle the dormitories within 90 days in the event the BCA should decide to terminate the lease.

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Andrew Phang JA held that the dormitories were in fact necessary to enable ZF to carry out its business and said:

> "Indeed, these dormitories constituted the very tools without which it would have been impossible for ZF to carry out its business at all. The nature of the dormitories relates more to the issue as to whether or not they were buildings proper. And, for the reasons set out . . . we are of the view that the dormitories were not buildings proper and constituted 'plant' instead."

IH v CIT

(Note: This case was decided before *ZF*.)

In *IH v CIT* (2010) MSTC ¶50-000; [2005] SGITBR 2, the taxpayer's business was that of letting shops, offices and clubs. IH had developed a multi-storey office building for rental to tenants and, in 2000, incurred capital expenditure on certain assets. IH sought to claim accelerated CAs under s 19A on the assets. The IRAS allowed the claim for some of them only.

The Board considered the following two issues in arriving at its decision:

(1) whether IH had incurred capital expenditure on the provision of machinery or plant for the purpose of its business, and

(2) whether the items were plant or machinery.

IH had contended that as its business was the letting of commercial space to a variety of tenants, it could not do this by letting out a mere shell, without providing the array of amenities and services which made the building tenantable. These included the provision of electricity, air conditioning, lifts, security and alarm systems, toilets and even a pleasant and conducive ambience for tenants and visitors.

The Board viewed that the "business use", "premises" and "completeness" tests were tools to assist it to form the view whether, on the facts, the items in dispute were plant or machinery provided by IH for the purpose of its business.

The Board accepted that IH's business required it to expend capital in the provision of certain items for, or in, or as part of, the building. The fact that the item is attached to a building does not, of itself, disqualify it as plant or machinery. However, if the item serves or functions as the building or premises on or at which the business is carried on, it would not be plant or machinery qualifying for CAs. The Board also accepted that the items in dispute could be considered separately, on a "piecemeal" basis (*Cole Bros Ltd v Phillips* 55 TC 188).

Chapter 8

Applying the above principles, the Board held that the following qualified as plant or machinery:

- the electrical switchgear and transformers, which were essential means to allow and control the supply of power to the building, and
- the electrical door operating systems (even though they were attached, and could be said, to form part of the building), which were not unlike the motorised steel roller shutter doors in *Carpentaria Transport Pty Ltd v FCT* ATC 4590.

The Board held the following items not to be plant:

- Mechanical door closers.

  (The Board regarded these as ordinary doors with small mechanical equipment screwed onto them. On balance, they were not plant or machinery provided by IH for the purpose of its business, but formed part of the premises on which the business was carried out.)

- Decorative fountains and water features located in the front and side of the building.

  (Although the Board accepted, in principle, the "piecemeal" approach, it was not persuaded that the fountain and water features, be they taken as a whole or in their separate components, were plant or machinery provided for the purpose of IH's business, ie that of developing, owning and letting commercial buildings. They were nice to have, adding to the attractiveness of the building, but not a necessity. *IRC v Scottish & Newcastle Breweries*, where the décor and murals were used by the hotelier as part of the setting to create atmosphere and make the interior of the hotel attractive to guests and visitors to the hotel, was distinguished.)

- Sanitary fittings.

  (The Board applied the "completeness test" and held the view that the identity of the sanitary fittings was not separate from the toilet and that the toilet would be incomplete without the sanitary fittings. *CIT v Taj Mahal Hotel* 1971 82 ITR was distinguished. IH's business of owning and letting a good class office building in the prime business district, although sharing some characteristics with that of the hotelier assessee in *Taj Mahal*, was nevertheless not the same as a hotel business.)

During the hearing, the IRAS conceded on the building automation system wiring being plant. The building had an automation system which controlled the air conditioning. The wiring linked certain mechanical and plant components, such as pumps and motors, to the main control centre.

The IRAS also gave the following criteria that it had adopted when determining whether items in the building qualified as plant:

- whether the items fell within the Sixth Schedule to the Act
- whether the items were considered as standard items in a general commercial building. Non-standard items were not part of the premises and would qualify as plant
- whether there were case law precedents
- whether the items were considered by the IRAS as plant, and
- whether a concession for claim had been granted by the IRAS.

The Board commented that it was "unable to distil much benefit from the Revenue's application of the law" and made no decision with regard to the applicability or non-applicability of the Sixth Schedule with regard to this case.

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Examples of plant or machinery

The following are the more commonly cited court cases on "plant".

Held to qualify as "plant":

- Concrete dry dock — *IRC v Barclay Curle & Co Ltd* (1968) 45 TC 221
- Décor, light fittings, murals, plaques, tapestries, pictures and metal sculptures to create an atmosphere for hotel guests — *IRC v Scottish & Newcastle Breweries Ltd* (1982) STC 296
- Decorative screens installed in windows by building societies to attract customers — *Leeds Permanent Building Society v Proctor* (1982) STC 821
- Designs and blueprints (drawings, plans and technical data) — *Nippon Electronic (P) Ltd v CIT* (1979) 116 ITR 231
- Dockside silos — *Schofield v R&H Hall Ltd* (1974) 49 TC 538
- Dyeing house — *Wangaratta Woollen Mills Ltd v FC of T* 69 ATC 4095
- Electric fans and other appliances — *Sundaram Motors v CIT* 71 ITR 587
- Freezing chamber — *CIT, Lucknow v Kanodia Cold Storage* 100 ITR 155
- Horse — *Yarmouth v France* (1887) 19 QBD 647
- Knives and lasts used in the manufacture of shoes — *Hinton v Maden & Ireland Ltd* (1959) 38 TC 391
- Law library — *Munby v Furlong* (1977) STC 72
- Light fittings, ceiling and pedestal fans, and water pipe fittings in hotels — *CIT v Jagadeeschandran & Co* 75 ITR 697
- Movable office partitions — *Jarrold v John Good & Sons Ltd* (1963) 40 TC 681. Also, demountable partitions — *CIR v Charkay Properties Pty Ltd* 38 SATC 159
- Partitions poles, cables, conductors and switch boards for distribution of electricity — *CIT v Indian Turpentine and Rosin Co Ltd* 75 ITR 533
- Sanitary and pipeline fittings in a hotel — *CIT v Taj Mahal Hotel* 82 ITR 44
- Swimming pools — *Cooke v Beach Station Caravans Ltd* (1974) 49 TC 514, and
- Wells — *CIT v Warner Hindustan Ltd* (1979) ITR 15.

Held not to qualify as "plant":

- Bed of river — *Dumbarton Harbour Board v Cox* (1919) 7 TC 147
- Canopy over garage service area — *Dixon v Fitchs' Garage Ltd* (1975) STC 480
- Designs for wallpaper and furnishing fabrics — *McVeigh v Arthur Sanderson & Sons Ltd* (1969) 45 TC 273
- Electric lamps and fittings in a tea shop — *J Lyons & Co Ltd v Attorney-General* (1944) Ch 281
- False ceilings installed in restaurant — *JW Hampton (HMIT) v Fortes Autogrill Ltd* (1980) STC 80
- Fixtures in fast food restaurants — *Wimpy International Ltd v Warland (HMIT); Associated Restaurants Ltd v Warland (HMIT)* (1988) BTC 11,199
- Gymnasiums — *St Johns' School (Mountford and Knibbs) v Ward* 49 TC 524

- Human body — *Norman v Golder* (1945) 26 TC 293
- Ship used as floating restaurant — *Benson v Yard Arm Club Ltd* (1979) STC 266
- Wallpaper pattern books — *Rose & Co Ltd v Campbell* (1967) 44 TC 500
- Water storage tank used for storing water — *Jayasingrao Piraji Rao Ghatge v CIT* 46 ITR 1160, and
- Water tower — *Margrett v Lowestoft Water & Gas Co* (1935) 19 TC 481.

Some common examples of items that may be classified as plant or machinery are as follows:

- motive power and engines whether driven by steam, gas or electricity, ie boilers, furnaces, dynamos, etc
- shafting, pulleys and banding conveying the power to the machines
- processing machinery whether hand-operated or power driven, eg lathes, pumps and other similar machinery
- stationary transport such as tanks, vaults, containers and partitioning
- mechanical transport such as locomotives, railway wagons, aeroplanes, ships, barges, hovercraft, etc
- electrical devices such as X-ray and electronic equipment, computers, dust extraction plant, fire sprinklers, etc
- office equipment and furniture including typewriters, accounting machines, furniture generally, telephone and intercom installations
- buildings and structures which play a part in the manufacturing process rather than just providing a setting for the operations of the business
- air conditioning, ducting and vents — generating plant, ducting and vents whether installed in a new or old building, and
- expenditure incurred for reticulation services (such as air, gas, water, steam, electricity, oil and fire services) for the relevant installations in a factory.

Note that expenditure on the provision of machinery or plant would include any capital expenditure on alterations to an existing building incidental to the installation of that machinery or plant for the purposes of the TBP (s 22) (see ¶8-220).

Carpets and venetian blinds — IRAS practice

Since February 1994, the IRAS has recognised that carpets and venetian blinds are an essential part of a modern office in order to project a desired corporate image and to attract customers; they therefore qualify as "plant" (see IRAS e-Tax Guide "Machinery and Plant: Section 19/19A Income Tax Act", updated on 20 April 2011).

Where expenditure on carpets and blinds has previously been allowed a deduction under the replacement basis in s 14(1)(c), CAs may be claimed for expenditure on the replacements. Alternatively, a person carrying on a TBP may continue to claim deductions on the replacement basis (see Chapter 7 at ¶7-100).

In the e-Tax Guide, the IRAS has provided the following non-exhaustive lists of items that it considers to qualify as "plant" and items that it does not consider to qualify as "plant". It is noted that the e-Tax Guide continues to apply the "business use" test

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and the "business premises" test in determining whether an asset qualifies as plant, although the update on 20 April 2011 was inserted after the Court of Appeal in *ZF* had handed down its decision.

IRAS examples of items that can be considered as plant

"1 Air conditioning and other mechanical installation

2 Artwork and tapestries, posters, paintings, picture frames, demountable décor pillar, demountable décor column and ornamental features, including decorative finishes and murals. These stand-alone objects are generally found to serve a business function in hospitality-related businesses, example clubs, restaurants and hotels. For items that are quasi-structural, ie demountable with separate identity, eg mirrors, décor, a functional analysis is adopted if a legitimate function is served, and the item would be treated as plant even if there are doubts as to whether the premises test is satisfied. In other non-hospitality related businesses, taxpayer need to demonstrate that these are plant and machinery of the trade.

3 Books that are tools of the trade and used in the day-to-day operation of the profession

4 Blinds and curtains

5 Building automation and control systems

6 Built-in-storage units and dispensers

7 Carpets and carpet tiles

8 Central grease removal system that performs a special function in the business

9 Cold water storage tanks that do not form part of a general water supply

10 Containers used for carriage of goods by any mode of transportation

11 Data and telecommunication cables and wiring

12 Electrical and electronic equipment and wiring (eg air-conditioning system, security/alarm system, sprinkler system and electrical appliances)

13 Electrical door operating systems, mechanical parts of doors and gates (but not the doors and gates themselves)

14 Exit/emergency lights as part of the fire safety device

15 Escalator and travellator

16 Fire alarm and fire fighting installation

17 Furniture and fixtures which are not structural component of a building

18 Generator

19 Hot water heaters and the heating system for hot water

20 Industrial plant and machinery

21 Lifts, excluding lift shaft (lift shaft can only be included if it falls within section 22 of the ITA)

22 Lightning protection system

23 Mirrors used in hair salons/retail stores for fitting of clothes, shoes and other accessories

24 Motor vehicles (goods/commercial vehicles such as pick up, van, truck, lorry, bus, motorcycle, bicycle)

25 Mechanical parts for fountains and water features

26 Office equipment (eg computer, printer, photocopier, fax machine and telecommunication equipment)

27 Partitions - Movable/demountable exclude those functioning as walls/ceilings

28 Playground equipment for children used by clubs and resorts, playschool or businesses that provide children's education

29 Public address and intercom systems

30 Pumps for swimming pools

31 Ramps that are moveable and not permanently fixed to the building

32 Security installation

33 Showcase or display lighting or lighting with special function

34 Signboard ant other signage

35 Stand alone lamps (ornamental in nature) may be plant if there is another source of illumination

36 Switchboard, switchgear, distribution board, transformers, control mechanism and cabling for identifiable plant

37 Vehicle control equipment

38 Window cleaning equipment."

IRAS examples of items that are not considered to be plant

"The items below are not plant as they are commonly identified as being integral and ordinary parts of the building or structure.

1 Awning

2 Doors/door handles/door stopper/mechanical door closer/automatic sliding door

3 Dormitory used as temporary labour quarters and erected using pre-fabricated structure which are demountable even if connected by bolts and nuts. However, a dormitory can qualify as plant if it is erected on a site on short-term lease by a dormitory operator. The dormitory must be constructed with temporary and ephemeral materials to facilitate the intention to temporarily locate and move it from place to place.

4 Floor tiling/raised floors, false ceiling, ceiling boards and other ceiling work

5 Fountain and water features

   - Fountains and water features are treated as structural and not plant. However, the mechanical parts may be conisdered as machinery.

6 Garbage and waste disposal system, where it is not a statutory requirement

7 Gates

8 Installation of gas system for general gas supply

9 Landscaping

10 General lightings and electrical works to provide general illumination or general supply of electricity, except those meant to provide for the specific requirements of the trade. For example, floodlight to illuminate sports pitches may qualify but not the general lighting in changing rooms and areas available to the general public.

11 Portable items that form part of the setting — examples include container office, portable toilet, demountable canopies for car wash.

12 Ramps that are permanently fixed to the building

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13 Refuse chutes annexed to building

14 Renovation/refurbishment works as stated in the e-Tax Guide dated 18.06.08

[Author's note — this item refers to renovation and refurbishment works the expenditure on which qualify for s 14Q special deduction.]

15 Roller shutters

16 Sanitary fittings

17 Sewers in relation to a restaurant

18 Stairs

19 Sports surfaces and structures

– All sport structures and surfaces will not be allowed as plant, whether indoors or outdoors. Examples include swimming pools (excluding the pumps), tennis courts, squash courts, basketball courts, football fields, spectator stands, etc.

20 Wall tiling/wall finishes

21 Water reticulation system and waste pipe works

– The entire system would not be plant being integral to all buildings. Water tanks are considered to be part of the system. Water pumps are however treated as machinery. Heating systems for hot water will be treated as plant."

¶8-220 Qualifying expenditure

CAs will be granted, on due claim, to a person who incurs capital expenditure on the provision of machinery or plant for purposes of the TBP the person is carrying on (s 19). Expenditure is incurred when the liability to pay crystallises. Any capital expenditure incurred before the commencement of trade is to be treated as if it has been incurred on the date the trade commenced (s 19(1B)).

Plant and machinery in use for the purpose of TBP

The capital expenditure must be incurred on plant or machinery in use for the purpose of the person's TBP (s 19(2)). What amounts to plant or machinery in use for the purpose of a person's trade or business was deliberated by the Board of Review in a recent Singapore case.

In *BQM v CIT* (2011) MSTC ¶50-004 (*ATG v The CIT* [2011] SGITBR 2), the appellant was a company which carried on the manufacture of certain electronic products ("the Products") and certain equipment for manufacturing the Products. The appellant outsourced parts of its manufacturing operations for the Products to independent subcontractors. The business arrangement with the subcontractors with respect to the manufacturing of the Products was structured on a "buy-sell" model, where the subcontractors would:

(a) procure certain components of the Products from third-party parts vendors and/or the appellant

(b) process and/or assemble them

(c) manufacture the finished Products and/or components thereof, and

(d) sell the finished Products and/or components to the appellant.

The business arrangement included a pricing formula which ensured that the subcontractors did not unduly profit from the buying and ownership of the raw materials which were required to be purchased from specific appellant-designated suppliers.

The appellant placed certain plant and machinery for manufacturing the Products and components thereof at the subcontractors' premises for the purpose of manufacturing the Products and components. The appellant claimed AA under s 19 of the Act and CAs under s 19A of the Act for YA 2003 and YA 2004. The Comptroller refused the appellant's claims. The appellant appealed to the Board of Review.

The Board had to decide whether the plant and machinery placed by the appellant with the sub-contractors for use in the manufacturing processes of the Products which were sold to the appellant were plant and machinery in use by the appellant for the purpose of its TBP, thus entitling the appellant to claim CAs on such plant and machinery under s 19(2) and 19A(1) of the Act. Although the plant and machinery were placed in the premises of the subcontractors, access to the plant and machinery was controlled. Further, the Board found that:

- the appellant retained ownership and maintained the plant and machinery
- the plant and machinery were used exclusively to manufacture the Products and components for the appellant
- the plant and machinery contained the appellant's proprietary design over which the appellant maintained ownership and close control
- the appellant supplied training and customised technical knowledge for the operation of the plant and machinery
- the costs of the maintenance and repairs of the plant and machinery were borne by the appellant, and
- the price of the Products sold by the subcontractor to the appellant did not take into account the depreciation cost of the plant and machinery.

The Board was therefore satisfied that there was a sufficient connection between the capital expenditure incurred on the provision of the plant and machinery and the appellant's trade. Accordingly, the Board allowed the appellant's appeal.

As affirmed by *BQM*, CA is allowable on expenditure incurred by a person on the provision of a plant or machinery used by his subcontractor (located in or outside Singapore) if it can be shown that the plant or machinery is used for the purpose of that person's TBP. There must be sufficient connection between the expenditure incurred and the person's TBP. Whether there is such a connection is a question of fact and degree.

Alteration/installation expenditure

Expenditure on the provision of machinery or plant includes capital expenditure on alterations to an existing building incidental to the installation of that machinery or plant for the purposes of the TBP (s 22). Expenditure on the following would also qualify for CAs:

- floors — the added cost of strengthening a floor to support particular items of the plant

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- walls — where they are strengthened to support the plant, and
- roofs — cost of strengthening roofs to support the plant such as cranes, hoists, etc.

Note that the cost of general strengthening would not qualify as capital expenditure on the provision of machinery or plant.

Expenditure incurred on the installation of any machinery or plant qualifies for CAs. The cost of removing and re-installing plant and machinery is normally regarded as expenditure qualifying for CAs.

Example 8

A generator costing $150,000 is installed in a factory and the capital expenditure to prepare the site to house the generator is $70,000. The expenditure qualifying for CAs will be $220,000.

Exchange differences

In some circumstances, capital expenditure on the provision of plant or machinery can be affected by movements in exchange rates. For example, a manufacturer purchased machinery from Japan and suffered an exchange loss on payment owing to a revaluation of the yen. Such an exchange loss, being of a capital nature, will form part of the capital expenditure on the provision of the machinery for tax purposes if the purchase contract was contractually integrated with the financing arrangements that gave rise to the loss. The latter condition will not be satisfied if, for example, the foreign exchange loss had been incurred on a separate loan that was obtained to finance the purchase. The same reasoning applies where an exchange gain has arisen instead. See *Van Arkadie v Sterling Coated Materials Ltd* [1983] STC 95.

Example 9

L Ltd purchased a computer for A$175,000 from Australia (assume that A$1 = S$1 on the date of purchase). The payment for the computer was to be made in A$. Owing to the appreciation of A$, L Ltd had to pay S$185,000, thus making an exchange loss of S$10,000. For purposes of CAs, the qualifying expenditure will be S$185,000.

Financing expenses

In *Ben Odeco Ltd v Powlson* (1978) STC 460, the taxpayer company had financed the construction of an oil rig by various loans. Interest and commitment fees were paid on these loans before the company commenced trading and these disbursements were capitalised in the accounts. It was held that the financing expenses were incurred in the provision of finance and not on the provision of plant and therefore did not qualify for CAs. Based on this principle, CAs claimable on a machine under hire purchase can be claimed only in respect of the cash price, ie the hire-purchase price excluding hire-purchase interest. The hire-purchase interest qualifies for deduction as an expense under s 14(1)(a).

Special provisions for motor cars

CAs cannot be claimed for capital expenditure incurred on motor cars, except for the following motor cars (s 19(5)):

- *Taxis* — the owners can claim CA on the full cost of the taxi (s 19(5)(a))
- *Foreign registered cars* — Up to YA 2013, restricted CAs can be claimed for motor cars that are registered outside Singapore and used exclusively outside Singapore (s 19(4)(b) and 19(5)(b)). The CA claim is subject to a $35,000 limit.

  – From YA 2014, the $35,000 limit has been removed and CAs will no longer be restricted.
- *Rental cars (SZ-plate) belonging to hiring companies* — the owners of private hire cars can claim CAs on the full cost of their rental cars (s 19(5)(c)), and
- *Cars used principally for instructional purposes* — a person who carries on the business of providing driving instruction and who holds a driving school licence or driving instructor's licence issued under the *Road Traffic Act* can claim CAs on the full cost of the vehicles (s 19(4) and 19(5)(e)).

Note that the cost of a certificate of entitlement (COE) is treated as part of the cost of the vehicle for the purpose of claiming CAs under s 19 or 19A (see IRAS e-Tax Guide "Change in Tax Treatment of Certificate of Entitlement ("COE") for Motor Vehicle", updated on 28 March 2005).

¶8-225 Wear and tear allowances for plant and machinery

Diagram 1

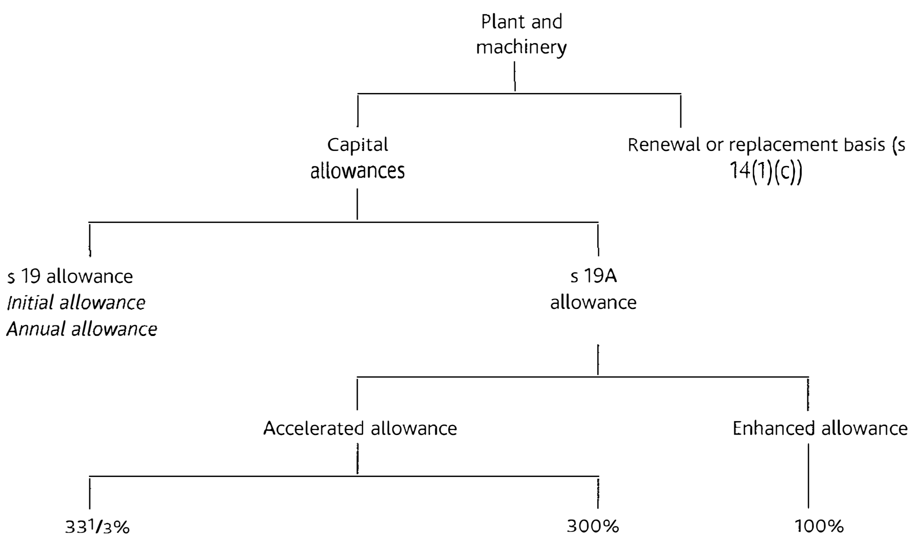

Diagram 1 depicts the CA scheme for plant and machinery.

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¶8-230 Initial and annual allowances under s 19

Initial allowance

IA is available to a taxpayer who has incurred capital expenditure on the provision of plant or machinery for the purposes of the taxpayer's TBP. The amount of IA is equal to 1/5 (ie 20%) of the asset's qualifying expenditure (s 19(1)).

IA can only be claimed in the YA relating to the basis period during which the expenditure was incurred. A claim for IA in respect of the capital expenditure incurred in that basis period cannot be deferred to a subsequent YA.

Where an IA has been claimed, the amount claimed has to be taken into account when computing the relevant AA, BA or BC.

Annual allowance

AA is granted on due claim and is subject to the additional condition that the asset must be in use at the end of the relevant basis period (s 19(2)). For example, if a company prepares annual accounts to 31 December each year, the plant or machinery on which AA is claimed for YA 2015 must be in use for the purpose of the business as at 31 December 2014. A taxpayer can defer his claim for AA for any particular YA.

The straight-line method is used to compute AA and the lives of the various categories of assets for tax purposes are found in the Sixth Schedule to the Act (reproduced in ¶8-600). AA is calculated based on the capital expenditure incurred on the provision of plant or machinery less IA claimed (if any), divided by the number of years of its life per the Sixth Schedule.

Example 10

Draconian Pte Ltd prepares its accounts up to 30 June every year. In March 2014, it acquired an electronic equipment costing $60,000 and the equipment was put to use immediately. According to the Sixth Schedule, the tax working life of the equipment is eight years. Assume that a claim for CAs is made under s 19.

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For YA 2015, the company can claim IA of $12,000 (ie 20% of $60,000) and AA of $6,000 (ie ($60,000 – IA of $12,000)/8 years).

If the company does not claim the IA of $12,000 for YA 2015, it will not be allowed to claim IA on that amount in subsequent YAs. However, the AA for YA 2015 in this instance would be based on the full cost and the AA would be $7,500 (ie $60,000/8 years).

Example 11

A pick-up van costing $45,000 was purchased in 2014. Assume that accounts are made up to 31 December annually. The asset's working life as per the Sixth Schedule is six years. The CAs under s 19 will be as follows:

		$
Cost (2014)		45,000
YA 2015:	IA	9,000
		36,000
	AA	6,000
		30,000
YA 2016:	AA	6,000
		24,000
YA 2017:	AA	6,000
Tax written-down value at end of Year 3		18,000

Notes:

(1) AA is ($45,000 – $9,000)/6 = $6,000.

(2) The AA granted (if claimed annually) would be $6,000 for YA 2015 to YA 2020.

(3) If AA is not claimed for a particular YA, the last YA is extended to YA 2021.

(4) If IA and AA were not claimed in YA 2015, the AA available for YA 2016 to YA 2021 would be $7,500 (ie $45,000/6) pa.

¶8-240 Accelerated and enhanced allowances under s 19A

Section 19A provides for the following accelerated allowances that can be claimed in lieu of the s 19 claim for IA and AA:

(a) 33 1/3% AA (s 19A(1))

(b) 100% allowance (s 19A(2) to 19A(10A) other than s 19A(1B) and s 19A(2A) to 19A(2J)), or

(c) 75%/25% allowances for capital expenditure incurred during the basis period for YA 2010 and YA 2011 (s 19A(1B) to 19A(1D)).

A person can claim enhanced 300% allowances in addition to the normal allowances claimable under the Act for qualifying capital expenditure incurred on the provision of prescribed automation equipment (PAE) during the basis period from YA 2011 to YA 2018 (s 19A(2A) to 19A(2J)) under the Productivity and Innovation Credit (PIC) scheme (see ¶7-750 and ¶8-241).

A taxpayer can claim the s 19 or s 19A allowances on an item of plant or machinery but he is not allowed to switch a claim from s 19 to s 19A or vice versa in respect of that item. Unlike a claim under s 19, there is no requirement for the plant or machinery to be in use at the end of the basis period to claim the s 19A accelerated allowances (s 19A(11)). Unless it has unabsorbed CAs or losses, a company generally prefers to claim s 19A allowances as this has the effect of deferring tax liability compared to a s 19 claim.

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Specific plant and machinery (100% allowance)

The one-year write-off can be claimed for the capital expenditure incurred on the following assets acquired for the purposes of a TBP:

- computers or other prescribed automation equipment including computer-aided design and manufacturing systems, data communications and processing equipment, text and voice processing equipment, etc (s 19A(2); Income Tax (Automation Equipment) Rules 2004; Income Tax (PIC Automation Equipment) Rules 2012))
- generators for the supply of electrical power to an office or factory in the event of a power failure (s 19A(3))
- robots (s 19A(4))
- efficient pollution control equipment or devices (s 19A(5))
- certified or approved energy-efficient equipment (s 19A(6))
- certified noise control device (s 19A(7))
- certified effective chemical hazard control device (s 19A(8))
- new diesel-driven goods vehicle or bus to replace existing diesel-driven goods vehicles or buses, subject to some conditions (s 19A(9), 19A(9A); IRAS e-Tax Guide "One Year Write-off for New Diesel-Driven Goods Vehicles and Buses", published on 29 June 2012)
- website (referring to a collection of programs, data and images accessible over the internet or any network using a browser or any other forms of access (s 19A(10) and 19A(15)), and
- machinery or plant costing no more than $5,000 each from YA 2013 ($1,000 before YA 2013) (s 19A(10A)) (see ¶8-290). The cap of $30,000 per YA for the one-year write-off of all such assets remains unchanged.

General plant and machinery (33 1/3% allowance)

From YA 2009, the 33 1/3% AA will be given, on due claim, over three YAs for ***all*** items of plant and machinery. This means that a taxpayer can choose the year in which to claim the allowances and is not required to claim the allowances over three consecutive YAs.

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Historical note

75%/25% allowances for YA 2010 and YA 2011

This was a temporary pro-business measure introduced in Singapore during the global financial crisis in 2008 and 2009.

To support businesses that intended to invest in new plant and machinery in preparation for the economic recovery, businesses were able to claim accelerated write-down on capital expenditure incurred on plant and machinery in the basis periods for YA 2010 and YA 2011 over a period of two years. Businesses could claim a write-down of 75% of the costs of these newly acquired plant and machinery in the first year of claim and the remaining 25% in the second year of claim (s 19A(1B)). This measure enhanced the existing CAs regime which allowed a claim of CAs over only three years for most items of plant or machinery.

Example 12

Company ABC closes its accounts annually on 31 December. Company ABC bought a generator costing $60,000 in June 2010. The working life of the generator is six years according to the Sixth Schedule. Company ABC can either choose to claim CAs under s 19, 19A(1) or 19A(3) (if the generator is a qualifying item under s 19A(3)):

YA		*s 19*	*s 19A(1)*	*s 19A(3)*
			33 1/3%	*100%*
2011:	IA (20% of $60,000)	$12,000		
2011–2016:	AA ((80% × $60,000)/6)	$8,000/year		
2011–2013:	($60,000/3)		$20,000/year	
2011:				$60,000

If Company ABC had elected for the 75%/25% allowances, it would be entitled to claim CAs as follows:

YA 2011 — 75% × $60,000 = $45,000

YA 2012 — 25% × $60,000 = $15,000

¶8-241 Prescribed automation equipment

The following paragraphs discuss the income tax treatment for:

(a) CAs claimable on capital expenditure incurred on the acquisition of PAE including payments made under finance leases which are treated as sale agreements, and

(b) deduction for expenditure incurred on the leasing of PAE under any qualifying leases.

The qualifying PAE is listed in the Income Tax (PIC Automation Equipment) Rules 2012. The claim for CAs is provided under s 19A(2A) to s 19A(2K) while the claim for deduction of leasing payments is provided under s 14T. The enhancements to the PIC scheme relating to the acquisition or leasing of PAE are summarised below:

	Amount of allowances
Acquisition of PAE	• 400% CAs for the first $400,000 of capital expenditure incurred • 100% on the balance of capital expenditure incurred
Leasing of PAE	• 400% deduction for the first $400,000 of qualifying expenditure incurred • 100% on the balance of expenditure incurred
Combined expenditure cap (this cap refers to the amount of expenditure that qualifies for enhanced allowance)	• $800,000 for YA 2011 and YA 2012 • $1.2m for YA 2013 to YA 2015 • $1.2m for YA 2016 to YA 2018

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Besides extending the PIC scheme for three years to YA 2018, the 2014 Budget also introduced a PIC+ scheme for small- and medium-sized enterprises (SMEs) that incur PIC qualifying expenditure exceeding the combined cap of $1.2m applicable for the relevant three YAs from YA 2013 to YA 2015 and YA 2016 to YA 2018 respectively. Please refer to ¶7-750 for more details relating to the PIC+ scheme for qualifying SMEs.

Acquisition of PAE

The following paragraphs also apply to capital expenditure incurred on the provision of PAE where the payments are made under finance leases treated as sale agreements pursuant to reg 4 of the Income Tax (Income from Finance Leases) Regulations (Cap 134, Rg 13).

Where a person has incurred capital expenditure during the basis period for any YA between YA 2011 and YA 2018 (both years inclusive) on the provision of one or more PAE for the purposes of a TBP carried on by him, the person is allowed on due claim:

(a) 100% **base allowance** on the qualifying cost, and

(b) 300% **enhanced allowance** of the lower of the capital expenditure incurred on the provision of the PAE and $400,000.

This means that a person can claim 400% CA on the first $400,000 of the capital expenditure incurred on the provision of PAE and 100% allowance on the balance expenditure.

The PIC incentive was, however, made more flexible by allowing a combined expenditure cap to apply separately for YA 2011 and YA 2012 (see historical note below), YA 2013 to YA 2015, and YA 2016 to YA 2018.

For a qualifying SME under the PIC+ scheme, the combined expenditure cap for YA 2015 will be increased to $1.4m and to $1.8m for YA 2016 to YA 2018.

The "combined expenditure cap" refers to the maximum amount of expenditure that qualifies for the 300% enhanced allowance.

Historical note

For YA 2011 and YA 2012, the combined expenditure cap is $800,000 if a taxpayer carries on a trade or business in a basis period relating to each qualifying YA. For example, if a company ceases to carry on any business in 2011 (ie the basis period relating to YA 2012), then the combined expenditure cap will not apply and only the annual expenditure cap of $400,000 will apply for YA 2011. Where the capital expenditure incurred by a person during the basis period for YA 2011 exceeds $400,000 but not more than $800,000, that person is allowed to claim an overall 400% allowances based on the lower of the capital expenditure incurred during the basis period and $800,000. For the following YA (YA 2012), the 400% allowance claimable by that person is based on the lower of:

(i) the capital expenditure incurred during the basis period for YA 2012, and

(ii) the balance, if any, after deducting from $800,000 the amounts of eligible capital expenditure in YA 2011.

The remaining capital expenditure, if any, is eligible for 100% CAs.

Example 13

Assume Company PQR incurred the following capital expenditure on the provision of PAE during the basis periods for YA 2011 and YA 2012:

Case	A	B	C
YA 2011	$300,000	$550,000	$850,000
YA 2012	$650,000	$400,000	$100,000
Total	$950,000	$950,000	$950,000

The amount of allowances claimable under s 19A for the relevant YAs is as follows:

	A $	B $	C $
YA 2011			
100% base allowances under s 19A(2)	300,000	550,000	850,000
300% enhanced allowances under s 19A(2A)/19A(2B)			
– 300% × $300,000	900,000		
– 300% × $550,000		1,650,000	
– 300% × $800,000 (capped)			2,400,000
Total allowances	1,200,000	2,200,000	3,250,000
YA 2012			
100% base allowances under s 19A(2)	650,000	400,000	100,000
300% enhanced allowances under s 19A(2A)/19A(2B)			
– 300% × $500,000 (capped)	1,500,000		
– 300% × $250,000 (capped)		750,000	
Total allowances	2,150,000	1,150,000	100,000
Total allowances for both years	3,350,000	3,350,000	3,350,000

Where the acquisition of the PAE is financed under a finance lease treated as a sale, then the lessee (ie Company PQR) is entitled to claim CAs as above. The lessor is not entitled to CAs.

For YA 2013, YA 2014 and YA 2015, the combined expenditure cap is $1.2m if a taxpayer carries on a trade or business in a basis period relating to each qualifying YA. Thus, if a company ceases to carry on any business in 2014 (ie the basis period relating to YA 2015), the combined expenditure cap will be $800,000 instead of $1.2m (s 19A(2BB)).

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Example 14

Assume Company PQR incurred the following capital expenditure on the provision of PAE during the basis periods for YA 2013, YA 2014 and YA 2015.

Company PQR carries on business for all the YAs concerned.

Assume that the PIC+ scheme (as announced in the 2014 Budget) does not apply.

Case	A	B	C
YA 2013	$300,000	$550,000	$850,000
YA 2014	$650,000	$400,000	$100,000
YA 2015	$1,000,000	$1,000,000	$1,000,000
Total	$1,950,000	$1,950,000	$1,950,000

The amount of allowances claimable under s 19A for the relevant YAs are as follows:

	A $	B $	C $
YA 2013			
100% base allowances	300,000	550,000	850,000
300% enhanced allowances			
– 300% × $300,000	900,000		
– 300% × $550,000		1,650,000	
– 300% × $850,000			2,550,000
Total allowances	1,200,000	2,200,000	3,400,000
YA 2014			
100% base allowances	650,000	400,000	100,000
300% enhanced allowances			
– 300% × $650,000	1,950,000		
– 300% × $400,000		1,200,000	
– 300% × $100,000			300,000
Total allowances	2,600,000	1,600,000	400,000
YA 2015			
100% base allowances	1,000,000	1,000,000	1,000,000
300% enhanced allowances			
– 300% × $250,000 (capped)	750,000		
– 300% × $250,000 (capped)		750,000	
– 300% × $250,000 (capped)			750,000
Total allowances	1,750,000	1,750,000	1,750,000
Total allowances for all three years	5,550,000	5,550,000	5,550,000

Chapter 8

For YA 2016, YA 2017 and YA 2018, the combined expenditure cap is $1.2m if a taxpayer carries on a trade or business in a basis period relating to each qualifying YA.

For a qualifying SME under the PIC+ scheme, the combined expenditure cap will be increased to $1.4m for YA 2015 and to $1.8m for YA 2016 to YA 2018. This is on the basis that under the PIC+ scheme, the expenditure cap for qualifying entities will be increased from $400,000 to $600,000 per qualifying activity for each YA from YA 2015.

Disposal of PAE within one year

Where a person sells, transfers, assigns or leases the PAE within the period of one year from the provision of such equipment, any enhanced allowances previously granted would be deemed as income for the YA relating to the basis period in which the sale, transfer, assignment or lease occurs (s 19A(2H)). No enhanced allowance in respect of such equipment will be granted for that YA relating to the basis period in which the disposal occurs and for any subsequent YA.

Deduction for expenditure on leasing of PAE under qualifying lease (s 14T)

The following paragraphs apply to the leasing of PAE other than PAE under a finance lease which is treated as a sale agreement (see earlier paragraphs).

A person carrying on a trade or business during the basis period for the relevant YAs (YA 2011 to YA 2018) can claim:

(a) deduction under s 14, and

(b) enhanced deduction of 300% of the lower of the qualifying PAE leasing expenditure incurred during the basis period for the purposes of his trade or business and $400,000 (s 14T(1), 14T(2), 14T(2A)).

For YA 2011 and YA 2012, the combined expenditure cap was $800,000.

For YA 2013 to YA 2015, the combined expenditure cap is $1.2m.

For YA 2016 to YA 2018, the combined expenditure cap is $1.2m.

For a qualifying SME under the PIC+ scheme, the combined expenditure cap will be increased to $1.4m for YA 2015 and to $1.8m for YA 2016 to YA 2018. This is on the basis that under the PIC+ scheme, the expenditure cap for qualifying entities will be increased from $400,000 to $600,000 per qualifying activity for each YA from YA 2015.

The **combined expenditure cap** refers to the maximum amount of expenditure that qualifies for the 300% enhanced deduction.

Note that the leasing expenditure must be deductible under s 14 before the person is entitled to claim the 300% enhanced deduction. The enhanced deduction will not be granted if the equipment is sub-leased to another person during that basis period or if CA has been previously claimed in respect of the equipment (s 14T(3)).

The enhanced deductions under s 14T apply to payments made under an operating lease or a finance lease other than a finance lease which has been treated as a sale. "Qualifying lease expenditure" is the amount net of any grants or subsidies from the Government or a statutory board (s 14T(8)).

Examples 15 and 16 illustrate the available deductions under s 14T.

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Example 15

Assume Company XYZ incurred the following qualifying expenditure on the leasing of PAE during the basis period for YA 2011 and YA 2012:

Case	A	B	C
YA 2011	$300,000	$550,000	$850,000
YA 2012	$650,000	$400,000	$100,000
Total	$950,000	$950,000	$950,000

The amount of deductions claimable under s 14 and 14T for the relevant YAs is as follows:

	A $	B $	C $
YA 2011			
100% deduction under s 14	300,000	550,000	850,000
300% enhanced deduction under s 14T			
– 300% × $300,000	900,000		
– 300% × $550,000		1,650,000	
– 300% × $800,000			2,400,000
Total deductions	1,200,000	2,200,000	3,250,000
YA 2012			
100% deduction under s 14	650,000	400,000	100,000
300% enhanced deduction under s 14T			
– 300% × $500,000	1,500,000		
– 300% × $250,000		750,000	
Total deductions	2,150,000	1,150,000	100,000
Total deductions for both years	3,350,000	3,350,000	3,350,000

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Example 16

Assume now that Company XYZ had instead incurred the following qualifying expenditure on the leasing of PAE during the basis periods for YA 2013, YA 2014 and YA 2015.

Assume that the PIC+ scheme (as announced in the 2014 Budget) does not apply.

Case	A	B	C
YA 2013	$100,000	$200,000	$300,000
YA 2014	$650,000	$400,000	$100,000
YA 2015	$1,000,000	$1,000,000	$1,000,000
Total	$1,750,000	$1,600,000	$1,400,000

The amount of deductions claimable under s 14 and 14T for the relevant YAs will be as follows:

	A $	B $	C $
YA 2013			
100% deduction under s 14	100,000	200,000	300,000
300% enhanced deduction under s 14T			
300% × $100,000	300,000		
300% × $200,000		600,000	
300% × $300,000			900,000
Total deductions	400,000	800,000	1,200,000
YA 2014			
100% deduction under s 14	650,000	400,000	100,000
300% enhanced deduction under s 14T			
300% × $650,000	1,950,000		
300% × $400,000		1,200,000	
300% × $100,000			300,000
Total deductions	2,600,000	1,600,000	400,000
YA 2015			
100% deduction under s 14	1,000,000	1,000,000	1,000,000
300% enhanced deduction under s 14T			
300% × $450,000 (capped)	1,350,000		
300% × $600,000 (capped)		1,800,000	
300% × $800,000 (capped)			2,400,000
Total deductions	2,350,000	2,800,000	3,400,000
Total deductions for all 3 years	5,350,000	5,200,000	5,000,000

If Company XYZ had incurred the same amount of qualifying expenditure on the leasing of PAE during the basis periods for YA 2016, YA 2017 and YA 2018 as in the basis periods for YA 2013, YA 2014 and YA 2015 and if the PIC+ scheme (as announced in the 2014 Budget) does not apply, the amount of available deductions for YA 2016, YA 2017 and YA 2018 claimable under s 14 and s 14T will be the same amount of claimable deductions available in YA 2013, YA 2014 and YA 2015.

Overall cap on enhanced CAs and enhanced deductions on PAE

Where a person has incurred expenditure on both the leasing of PAE under a qualifying lease and the provision of PAE during the basis period for the relevant YA 2011 to YA 2015, the aggregate of **enhanced deductions** under s 14T and

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enhanced allowances under s in respect of all such expenditure cannot exceed (s 14T(4) and s 14T(4A)):

(a) for YA 2011, 300% of the lower of:

  (i) the aggregate of all such expenditure, and

  (ii) $800,000

(b) for YA 2012, 300% of the lower of:

  (i) the aggregate of all such expenditure, and

  (ii) the balance after deducting from $800,000 the lower of the eligible amounts specified in para (a)

(c) for YA 2013, 300% of the lower of:

  (i) the aggregate of all such expenditure, and

  (ii) $1.2m

(d) for YA 2014, 300% of the lower of:

  (i) the aggregate of all such expenditure, and

  (ii) the balance after deducting from $1.2m the lower of the amounts specified in para (c)

(e) for YA 2015, 300% of the lower of:

  (i) the aggregate of all such expenditure, and

  (ii) the balance after deducting from $1.2m the lower of the amounts specified in para (c) and para (d)

(f) for YA 2016, 300% of the lower of:

  (i) the aggregate of all such expenditure, and

  (ii) $1.2m

(g) for YA 2017, 300% of the lower of:

  (i) the aggregate of all such expenditure, and

  (ii) the balance after deducting from $1.2m the lower of the amounts specified in para (f), and

(h) for YA 2018, 300% of the lower of:

  (i) the aggregate of all such expenditure, and

  (ii) the balance after deducting from $1.2m the lower of the amounts specified in para (f) and para (g).

Example 17

Assume Company PQR incurred the following expenditure on the provision of PAE and on the qualifying leasing of PAE during the basis periods for YA 2013, YA 2014 and YA 2015.

Assume that the PIC+ scheme (as announced in the 2014 Budget) does not apply.

	A	B	C
	$	$	$
YA 2013			
– Leasing expenditure	200,000	450,000	650,000
– Acquisition of PAE	200,000	450,000	650,000
	400,000	900,000	1,300,000
YA 2014			
– Leasing expenditure	100,000	100,000	100,000
– Acquisition of PAE	100,000	100,000	100,000
	200,000	200,000	200,000
YA 2015			
– Leasing expenditure	550,000	300,000	100,000
– Acquisition of PAE	550,000	300,000	100,000
Total expenditure	1,100,000	600,000	200,000
Total expenditure over 3 basis years	1,700,000	1,700,000	1,700,000

The total amount of enhanced deductions and enhanced allowances claimable under the PIC is as follows:

	A	B	C
	$	$	$
YA 2013			
Amount claimable:			
100% deduction for leasing expenditure	200,000	450,000	650,000
100% base allowances	200,000	450,000	650,000
Total amount claimable under PIC (s 14T(4)):			
– 300% × Lower of ($400,000 or $1,200,000)	1,200,000		
– 300% × Lower of ($900,000 or $1,200,000)		2,700,000	
– 300% × Lower of ($1,300,000 or $1,200,000)			3,600,000
Total claims	1,600,000	3,600,000	4,900,000

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	A	B	C
	$	$	$
YA 2014			
100% deduction for leasing expenditure	100,000	100,000	100,000
100% base allowances	100,000	100,000	100,000
Total amount claimable under PIC (s 14T(4)):			
– 300% × Lower of [$200,000 or ($1,200,000 – 400,000)]	600,000		
– 300% × Lower of [$200,000 or ($1,200,000 – 900,000)]		600,000	
– 300% × Lower of [$200,000 or ($1,200,000 – 1,200,000)]			0
Total claims	800,000	800,000	200,000
YA 2015			
Amount claimable:			
100% deduction for leasing expenditure	550,000	300,000	100,000
100% base allowances	550,000	300,000	100,000
Total amount claimable under PIC (s 14T(4)):			
– 300% × Lower ($1,100,000 or ($1,200,000 – $600,000))	1,800,000		
– 300% × Lower of ($600,000 or ($1,200,000 – $1,100,000))		300,000	
– 300% × Lower of ($200,000 or ($1,200,000 – $1,200,000))			0
Total claims	2,900,000	900,000	200,000
Total claims over YA 2013, YA 2014 and YA 2015	5,300,000	5,300,000	5,300,000

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If Company XYZ had incurred the same amount of expenditure on the provision of PAE and on the qualifying leasing of PAE during the basis periods for YA 2016, YA 2017 and YA 2018 as in the basis periods for YA 2013, YA 2014 and YA 2015 and if the PIC+ scheme (as announced in the 2014 Budget) does not apply, the total amount of enhanced deductions and enhanced allowances claimable under the PIC scheme for YA 2016, YA 2017 and YA 2018 is the same amount of enhanced deductions and enhanced allowances claimable in YA 2013, YA 2014 and YA 2015.

¶8-242 Plant or machinery provided for R&D purposes

From YA 2009, a taxpayer who is carrying on any trade or business can claim CAs under s 19 or 19A, subject to conditions, for capital expenditure incurred on the provision of plant or machinery for R&D purposes even though the plant or machinery is not provided for the taxpayer's trade or business (s 19(8) and 19A(14B)). The qualifying capital expenditure must be incurred during the basis periods for the relevant YAs (YA 2009 to YA 2025) either directly by the taxpayer or by a R&D organisation that carries out the qualifying activities in Singapore on the taxpayer's behalf.

(See IRAS e-Tax Guide "Research and Development Tax Measures (4th Ed)", published on 22 January 2015.)

¶8-243 Plant or machinery used for dual purposes

In practice, individuals are granted CAs in respect of the capital expenditure they incurred on the provision of plant or machinery that are being used for their TBP and for private purposes. It is understood that the Comptroller permits a reasonable apportionment between business and non-business use.

Example 18

Assume that, in the accounting year ended 31 December 2014, Mervyn Lim, a sole proprietor, incurred capital expenditure of $60,000 on the purchase of a goods van for his business as a shopkeeper. He claimed s 19A three-year write-off on the van, and the Comptroller has determined that private usage accounts for 20% of total usage. The AA to be granted to Mervyn for each of the YA 2015, YA 2016 and YA 2017 will be $16,000 (ie 80% of $60,000/3).

¶8-245 Integrated industrial capital allowance

The integrated industrial capital allowances (IICA) scheme was withdrawn following the introduction of the integrated investment allowance (IIA) scheme on 17 February 2012.

The IICA scheme took effect on 1 March 2003. It was available to companies who located their headquarters and marketing activities in Singapore while their manufacturing activities were located in lower-cost countries in the region.

Before the IICA incentive was introduced, CAs were granted only on plant or machinery that were used for the purposes of a company's own trade or business. Under the IICA incentive, Singapore entities were allowed to claim CAs on their own plant and machinery used by their wholly owned subsidiaries outside Singapore. The EDB is the approving agency (see Pt XIIID of the *Economic Expansion Incentives (Relief from Income Tax) Act (Cap 86, 2005 Revised Ed)* (the "EEIA") and ¶19-750).

The IIA scheme provides an additional allowance on top of CA on fixed capital expenditure incurred for productive equipment placed overseas on approved projects. It took effect from YA 2013 for a period of five years for qualifying capital expenditure incurred on or after 17 February 2012. The EDB administers the IIA incentive (see ¶19-755).

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¶8-250 Relationship between CAs and the renewal or replacement basis of deduction

Section 14(1)(c) provides, *inter alia*, that an expense incurred for the renewal of any implement, utensil or article is deductible. In the case of plant and machinery, a deduction for the renewal of such assets can be allowed only if CAs have not previously been claimed on them.

The **renewal basis** (also called **replacement basis**) of deduction is not granted for the expenditure incurred to acquire the original asset. The claimant may also be required to prove that there is no element of improvement in the new item replacing the old one to qualify for the full deduction. In this regard, a claim for renewal deduction is generally less favourable than a claim for CAs. In practice, the renewal deduction is therefore normally claimed on items that do not qualify for CAs. These items include loose tools, implements, furnishings, moulds, uniforms and other items that have a relatively short life. The s 14(1)(c) renewal deduction is applicable also to assets that are used in the production of income other than income from a TBP. For example, a landlord who derives rental income under s 10(1)(f) can claim a deduction for the cost of replacement curtains.

¶8-255 Balancing allowance and charge

A balancing adjustment can be either a **balancing allowance** or a **balancing charge**. BA or BC is calculated when any of the following events takes place (s 20(1)):

(a) the plant or machinery ceases to belong to the taxpayer (eg if the asset is sold, scrapped or given in part exchange)

(b) the trade is permanently discontinued and the plant or machinery continues to belong to the taxpayer, or

(c) the plant or machinery permanently ceases to be used for the trade.

Situation (b) above applies also to a taxpayer who has been granted CAs (see ¶8-241) for plant and machinery that was provided for R&D undertaken by him or on his behalf and not for his trade or business (s 20(1)(b)).

The amount of balancing adjustment depends on the unallowed expenditure (ie the **tax written-down value (TWDV)**) of the plant or machinery and the sale, insurance, salvage proceeds or compensation received by the taxpayer. Thus, the total CAs made to a taxpayer will be equal to the original cost less whatever amount is received on the disposal of the asset.

Dismantling or disposal expenses

Where expenditure is incurred to dismantle or dispose of plant or machinery, it should be deducted from the relevant receipt in calculating the BA or BC.

If the TWDV of an asset exceeds the relevant receipt, a BA arises. If the relevant receipt exceeds the TWDV, a BC arises. The amount of the BC is, however, restricted to the total amount of CAs already granted on the asset.

Application of open-market price

If a sale is made at a price lower than the open-market price, the Comptroller has the power to apply the open-market price for purposes of calculating balancing adjustments (s 20(1A)). "Open-market price" means the price that the machinery or plant would have fetched if it had been sold in the open market at the time of the event in question (s 20(7)).

Compensation money

The issue of whether an *ex gratia* payment received by a taxpayer from its landlord to help defray the cost of relocation of its business from one location to another could constitute "compensation money" under s 20(3) was examined in the Singapore Board of Review case *YE v CIT* (2008) SGITBR 1. On the facts, the sum of money received by the taxpayer was for dismantling, transportation and reinstallation of plant and machinery as well as for the replacement of unsalvageable civil, structural and mechanical and electrical works. The Board accepted the taxpayer's argument that "compensation moneys" must refer to compensation money received for the plant and not compensation for financial assistance in the relocation. The Board ruled that "compensation moneys" in s 20(3) should not be construed without restriction to include all money received by a taxpayer as compensation for any loss arising when the plant or machinery ceased to be used in a trade or business or ceased to belong to the taxpayer.

Example 19

On 3 February 2012, Company W incurred $6,000 on a table for its trade. Company W adopts a 31 December year-end and had claimed three-year write-off under s 19A annual allowance on it. Company W sold the table on 17 August 2014.

Calculate the amount of BA or BC arising to Company W if it had sold the table for:

(a) $4,500

(b) $7,000, or

(c) $1,300.

Solution

	$	$
Cost (2012)	6,000	
YA 2013 — AA (33⅓%)	(2,000)	
TWDV at 31 December 2012		4,000
YA 2014 — AA (33⅓%)	(2,000)	
TWDV at 31 December 2013	2,000	

In situation (a)

Company W's net expenditure on the table was in fact only ($6,000 – $4,500) = $1,500.

The total amount of AA granted = $2,000 + $2,000 = $4,000.

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BC arising to Company W will be $2,500 (ie $4,500 – $2,000). This BC of $2,500 represents a recovery of excess CAs granted.

In situation (b)

Company W made a capital gain of $1,000 on the sale of the table, the $1,000 being the excess of the sale price of $7,000 over cost of $6,000.

The total amount of s 19A annual allowance granted = $4,000.

Although the amount of BC calculated would have been $5,000 (ie sale price $7,000 – TWDV $2,000), it must be restricted to $4,000. In effect, the BC restriction rule has excluded the difference of $1,000 (being a capital gain) from income taxation.

In situation (c)

Company W's net expenditure on the table was $6,000 – $1,300 = $4,700.

The total amount of AA granted = $4,000.

BA arising to Company W will be $700, the amount of CAs that Company W had in effect been "under-granted" previously.

¶8-260 Replacement of assets

Where a new item of machinery or plant is acquired to replace an existing one, and a BC arises from the disposal of the latter, the taxpayer may elect to set off the BC against the cost of the new item (s 21).

The effects of making a s 21 election are as follows:

(a) *Where the BC > cost of new asset*

- An amount equal to the difference will be the BC to be made for the replaced asset.
- No IA, AA or BA will be made or allowed for the new asset.
- The TWDV of the new asset is nil as an IA equal to its cost is deemed to have been granted. When the new asset is sold, a BC equal to the amount of sale proceeds, if any (since the TWDV is nil), will occur. This BC is restricted to the cost of the new asset.

(b) *Where the BC < cost of new asset*

- No BC will be made for the replaced asset.
- The IA and AA for the new asset will be computed based on its cost after deducting the BC arising on disposal of the replaced asset.
- An IA equal to the amount of the BC that had arisen on disposal of the replaced asset and that had been set off against the cost of the new asset is deemed to have been granted on the new asset. When the new asset is sold, this will be taken into account in calculating the BA or BC.

A result of making a s 21 election is therefore to defer the BC. If the company is profitable for tax purposes, this translates to a deferral of tax liability and an improvement in cash flow. However, the total amount of CAs granted on the eventual sale of the replacement asset will be the same regardless of whether or not a s 21 election has been made.

Section 21 does not apply to motor cars that do not qualify for CAs under s 19(5). In the case of a foreign registered motor car that is used exclusively outside Singapore, its replacement cost will, if the applicable YA is before YA 2014, be restricted to $35,000 (s 21(5)). The restriction was removed from YA 2014.

¶8-270 Sales between persons under common control

Where the buyer and seller of plant or machinery are under common control, or where one has control over the other, they can make an election under s 24 to treat the TWDV of the asset sold as the deemed sale price. The sale must not be one to which the general anti-avoidance provision of s 33 applies (s 24).

The consequences of a s 24 election are as follows:

- No BA or BC is made on the seller because the sale price is deemed to be the TWDV of the asset sold (s 24(3)(a)(ii)).
- If the seller has previously claimed s 19A allowances, such allowances continue to be available to the buyer and not to the seller, as if no sale had taken place (s 24(3)(c); see also *CIT v GE Pacific Ltd* (1994) 2 MSTC 7,252).
- If the seller has claimed s 19 allowances before the election, the buyer will continue to be granted s 19 allowances based on the TWDV after the election. The buyer is not granted any IA (s 24(3)(b)).
- If the buyer subsequently sells the asset and a BC arises on the sale, the buyer is treated as having been granted the total of IA and AA made not only to him but also to the seller in the election (s 24(3)(e)). The amount of BC will therefore be restricted to this total.

From 7 November 2005, where a change occurs in a partnership of persons carrying on any TBP by reason of retirement or death, or the dissolution of the partnership as to one or more of the partners, or the admission of a new partner, and where a s 24 election has not been made, any property of the partnership shall be treated as if the property had been sold:

(a) to all the remaining partners and new partners of the partnership on the date the change occurs, and

(b) at the open-market price (s 24(5)).

Example 20

A Ltd has two wholly owned subsidiaries, B Ltd and C Ltd. Both adopt the 31 December accounting year-end. During the year 2013, B Ltd transferred a piece of machinery to C Ltd. This asset was acquired by B Ltd in 2011 at a cost of $60,000. Both companies made the election under s 24.

(a) Assume B Ltd had claimed 33$^{1}/_{3}$% CAs under s 19A. The allowances for the relevant YAs would be:

B Ltd	$
Cost of machinery	60,000
Less: s 19A annual allowance (YA 2012 and YA 2013) (2 × $20,000)	(40,000)
TWDV as at 31 December 2012	20,000
YA 2014	
Less: Deemed sale price	(20,000)
Balancing adjustment	0*
* No BA or BC arises because of s 24 election.	
TWDV transferred to C Ltd in view of s 24 election	20,000

C Ltd	$
YA 2014	
TWDV transferred from B Ltd	20,000
AA	(20,000)
TWDV as at 31 December 2013	0

(b) Assume CAs were claimed by B Ltd under s 19. The machinery has six years of working life under the Sixth Schedule. The allowances for the relevant YAs would be:

B Ltd	$	$
Cost of machinery		60,000
Less: IA (YA 2012)	12,000	
AA (YA 2012 and YA 2013)	16,000	28,000
TWDV as at 31 December 2012		32,000
YA 2014		
Less: Deemed sale price		32,000
Balancing adjustment		0*
* No BA or BC arises because of s 24 election		
TWDV transferred to C Ltd in view of s 24 election		32,000

C Ltd	$
YA 2014	
TWDV transferred from B Ltd	32,000
AA TWDV as at 31 December 2013	(8,000)
C Ltd can claim s 19 annual allowance of $8,000 for another 3 years from YA 2015 to YA 2017.	24,000

Chapter

¶8-280 Hire purchase and leased assets

Plant and machinery acquired under hire purchase

When plant or machinery is acquired on hire-purchase terms, the taxpayer does not become the legal owner of it until the final payment has been made. The instalments under such terms consist of two elements, namely the hire-purchase interest and the capital repayment of the purchase price. The hire-purchase interest is deductible if it satisfies the conditions in s 14 and is not prohibited by s 15.

For s 19 claims on hire-purchase assets, IA is calculated by reference to the capital repayment in the instalment payments while AA is calculated by reference to the cash price of the asset, ie the hire-purchase price less the hire-purchase interest (s 19(2)(a)(ii)). For s 19A claims, the AA would be based on the capital repayments made in each basis period.

Example 21

An asset with a 10-year life span was acquired for $20,000 in 2013 on hire-purchase terms. The payments made, *excluding interest charges*, were $8,000 in 2013 and $12,000 in 2014.

CAs under s 19:	$
YA 2014 IA (20% of $8,000)	1,600
YA 2015 IA (20% of $12,000)	2,400
Total IA	4,000

AA from YA 2014 to YA 2023

$$\frac{\text{Original cost (\$20,000) less IA (\$4,000)}}{\text{Working life of asset (10 years)}} = \frac{\$16,000}{10} = \$1,600$$

CAs under s 19A (33⅓% allowances):	$
YA 2014 ($8,000/3)	2,667
YA 2015 ($8,000/3) + ($12,000/3)	6,667
YA 2016 ($8,000/3) + ($12,000/3)	6,666
YA 2017 ($12,000/3)	4,000

Leased plant or machinery

Under an operating lease of plant or machinery, the lessor is entitled to the CAs. The lessee can claim a deduction for the hiring charges if the expenditure is incurred in the production of its income (see ¶8-241 for enhanced allowances for provision of PAE).

CAs under s 19, 19A, 20, 21, 22 or 23 of the Act are available to a lessee for any plant or machinery under a finance lease that is treated as a sale agreement. A finance lease is treated as a sale agreement where:

- the lessee has an option to purchase the machinery or plant during the term of the lease including any extension or renewal thereof or upon its expiry
- the machinery or plant that is leased is a limited use asset
- the machinery or plant in a sale and lease back transaction has been previously used by the lessee or any other person
- the lessor and lessee are related to each other and certain other conditions are satisfied, and
- the parties to the lease include a lessor, lessee and one or more long-term creditors who provide a substantial part of the financing for the acquisition of the leased machinery or plant without any recourse to the lessor for the repayment of the loan.

(Income Tax (Income from Finance Leases) Regulations (Cap 134, Reg 13))

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¶8-290 100% CA for items of machinery or plant costing no more than $5,000 each

From YA 2013, a 100% write-off is available on an asset of machinery or plant on due claim if:

(a) the cost of each asset does not exceed $5,000 (low-value asset), and

(b) the total claim for 100% write-off of all such assets is capped at $30,000 for each YA (s 19A(10A) and 19A(10B)).

(Before YA 2013, the cost of each asset was capped at $1,000.)

The IRAS website (www.iras.gov.sg) provides the following information on the low-value assets which can be written off in one year in any YA subject to a total claim of $30,000:

(1) low-value assets that are acquired in the YA, and

(2) low-value assets acquired before the YA* where:

- no claim for CAs has been made before (ie claim for CAs was deferred previously), or
- a claim of CAs was previously made under s 19 for normal CAs or s 19A for the three-year or two-year write-off (ie the 75%–25% temporary rule) and there is a TWDV brought forward to the current YA.

* The value cap of the asset that is applicable is that of the YA in which the one-year write-off is claimed. In other words, the value cap per asset is $1,000 if the claim is made in any YA from YA 2005 to YA 2012 and $5,000 if the claim is made in any YA from YA 2013 onwards.

Where such total claim by the person exceeds $30,000 for any YA:

(a) the CAs on any capital expenditure still unallowed may be made under s 19 or 19A(1) for that YA. Where s 19 allowances have been claimed, no s 19A allowances shall be made in any subsequent YA in respect of the amount of that expenditure remaining unallowed under s 19, unless approval has been granted, and

(b) for subsequent YAs, the person can either:

(i) continue to claim s 19 or 19A(1) allowances on the unallowed capital expenditure, or

(ii) claim immediate write-off of the TWDVs brought forward for those assets if the total claim for the TWDVs on the said assets and the claim for 100% write-off of all other assets costing not more than $5,000 each is capped at $30,000 for that YA concerned.

The "100%-write-off" treatment will not apply to any item of machinery or plant which is acquired under a hire-purchase agreement and whose original cost exceeds $5,000 ($1,000 before YA 2013) (s 19A(10C)).

Example 22

Company C purchased eight chairs (each chair cost $4,000) during the year ended 31 December 2014. The useful life of furniture under the Sixth Schedule is 10 years.

For YA 2015

What is the maximum amount of CA on low-value assets (ie under s 19A(10A)) that Company C can claim for YA 2014?

Solution

Company C will be able to claim a maximum of $28,000 (7 chairs × $4,000) in s 19A(10) CA.

Company C cannot claim 100% CA on the 8th chair as doing so would exceed the cap of $30,000 for YA 2015. Instead, for the 8th chair, Company C can claim either:

- s 19 CA

  (ie IA = 20% × $4,000 = $800, and AA = 80% × $4,000/10 = $320), or
- s 19A(1) AA (ie $4,000/3 = $1,333).

For YA 2016

What kind of CA may Company C claim on the 8th chair for YA 2016?

Solution

Company C will be able to

- continue claiming either s 19 or s 19A(1) CA on it, or
- claim s 19A(10A) 100% CA on it and on other low-value assets acquired during the year 2015, subject to the $30,000 annual cap.

INTANGIBLE ASSETS

¶8-310 Intellectual property rights

To promote Singapore as an intellectual property (IP) hub and a knowledge-based economy, IP rights acquired by a company for use in its trade or business qualify for **writing-down allowances (WDA)** (s 19B).

IP rights mean the right to do or authorise the doing of anything which would, but for that right, be an infringement of any of the following:

- patents
- copyrights
- trademarks
- registered designs
- geographical indications
- layout designs of integrated circuit
- trade secrets
- information that has commercial value, or
- the grant of protection of a plant variety (s 19B(11)).

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In the terms "trade secret" and "information that has commercial value" and any work or subject-matter to which the expression "copyright" relates in the definition of IP rights, the following are excluded:

(a) information of customers of a trade or business, eg a list of customers and requirements of those customers gathered in the course of the carrying on of that trade or business

(b) information on work processes (eg standard operating procedures) other than industrial information or techniques that is likely to assist in the manufacture or processing of goods and materials, and

(c) compilation of any information as described in para (a) or (b) above.

The above list is not an exhaustive exclusion list. The Minister may by regulations prescribed other matters to be included in what is excluded from the definition of IP rights for the purposes of the WDA.

Where both legal and economic ownership lies with the Singapore company

WDA will be granted automatically for qualifying expenditure incurred from 1 November 2003 up to the last day of the basis period for YA 2020 (s 19B(10)) if the legal and economic ownership of the IP lies with the Singapore company. This means that the legal assignment of the IP rights must be transferred to the Singapore company together with the accrual of future economic benefits attributable to the rights. In addition, third-party independent valuation reports on the value of the right acquired must be submitted with the declaration form where the value of the capital expenditure incurred in acquiring the right is equal to or greater than:

- $2m for unrelated party transactions, or
- $500,000 for related party transactions.

Where only economic ownership lies with the Singapore company

WDA under s 19B may be extended, on an approval basis, to companies which are only the economic owners but not the legal owners of IP rights acquired from 17 February 2006 (s 19B(2B)).

Chapter 8

WDA

Capital expenditure incurred on the IP rights may be written off on a straight-line basis **over five years** (ie at 20% per annum) beginning with the YA relating to the basis period in which the expenditure is incurred (s 19B(1) and 19B(2)). For this purpose, capital expenditure excludes legal fees, registration fees, stamp duty and other costs related to the acquisition of the rights (s 19B(11)). Expenditure incurred before commencement of the company's trade or business is treated as having been incurred on the day the trade or business commenced (s 19B(3)).

Under the PIC scheme, a company which has incurred capital expenditure in acquiring one or more IP rights for use in its trade or business can claim an enhanced (ie additional) WDA of 300% based on the lower of the capital expenditure incurred during the basis period for the relevant YAs (YA 2011 to YA 2018) and $400,000 (s 19B(1A)). Therefore, only a company that has both legal and economic ownership of the IP rights may claim the enhanced WDA under the PIC scheme. This amount of enhanced WDA is also claimable **over five years** (ie 20% per annum) (s 19B(2)). The

PIC incentive has been made more flexible by allowing a combined expenditure cap to apply separately for YA 2011 and YA 2012 (see Example 23), and for YA 2013 to YA 2018 (see Examples 24 and 25).

The combined expenditure cap for YA 2011 and YA 2012 was $800,000.

The combined expenditure cap for YA 2013 to YA 2018 is $1.2m.

For a qualifying SME under the PIC+ scheme, the combined expenditure cap will be increased to $1.4m for YA 2015 and to $1.8m for YA 2016 to YA 2018. The expenditure cap for qualifying entities will be increased from $400,000 to $600,000 per qualifying activity for each YA from YA 2015 under the PIC+ scheme.

The **combined expenditure cap** refers to the maximum amount of expenditure that qualifies for the 300% enhanced WDA.

The combined expenditure caps apply only if a taxpayer carries on a trade or business in a basis period relating to each qualifying YA. For example, if a company ceased to carry on any business in 2011 (ie the basis period relating to YA 2012), then the combined expenditure cap of $800,000 would not apply and the annual expenditure cap of $400,000 would be applicable only for YA 2011.

Similarly, the combined expenditure cap of $1.2m for YAs 2013 to 2018 applies only if a taxpayer carries on a trade or business in a basis period relating to each qualifying YA. For example, if a company ceases to carry on any business in 2014 (ie the basis period relating to YA 2015), then the combined expenditure cap will be $800,000 instead of $1.2m.

Examples 23 to 27 illustrate how the WDA is computed.

Example 23

Company A incurred capital expenditure of $200,000 to acquire IP rights during the accounting year ended 31 December 2010. The amount of WDA claimable for YA 2011 was $160,000 (ie ($200,000 + $600,000 (300% × $200,000))/5 years).

Assume Company A incurred another $700,000 on IP rights during the accounting year ended 31 December 2011.

The total WDA claimable by Company A was $3.3m, details as follows:

Basis year	Total WDA	Annual WDA	WDA period
2010	$800,000 (base allowance $200,000 + 300% enhanced allowance × $200,000)	$160,000	YA 2011 to YA 2015
2011	$2,500,000 (base allowance $700,000 + 300% enhanced allowance × $600,000 (restricted, as combined expenditure cap of $800,000 for YA 2011 and YA 2012 applies))	$500,000	YA 2012 to YA 2016

For YA 2011, WDA	= $160,000
For each of YA from YA 2012 to YA 2015, WDA	= $160,000 + $500,000
	= $660,000
For YA 2016, WDA	= $500,000

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Example 24

Company A incurred capital expenditure of $200,000 to acquire IP rights during the accounting year ended 31 December 2012. The amount of WDA claimable for YA 2013 is $160,000 (ie ($200,000 + $600,000 (300% × $200,000))/5 years).

Assume Company A incurred another $700,000 and $1m on IP rights during the accounting years ended 31 December 2013 and 31 December 2014 respectively.

The total WDA claimable by Company A is $5.5m, details as follows:

Basis year	Total WDA	Annual WDA	WDA period
2012	$800,000 (base allowance $200,000 + 300% enhanced allowance × $200,000)	$160,000	YA 2013 to YA 2017
2013	$2,800,000 ($700,000 + 300% × $700,000)	$560,000	YA 2014 to YA 2018
2014	$1,900,000 ($1,000,000 + 300% × $300,000 (restricted, as combined expenditure cap of $1,200,000 for YA 2013 to YA 2015 applies))	$380,000	YA 2015 to YA 2019

For YA 2013, therefore, WDA	= $160,000
For YA 2014, WDA	= $160,000 + $560,000
	= $720,000
For each of the YAs from YA 2015 to YA 2017, WDA	= $160,000 + $560,000 + $380,000
	= $1,100,000
For YA 2018, WDA	= $560,000 + $380,000
	= $940,000
For YA 2019, WDA	= $380,000

Example 25

Company A incurred capital expenditure of $200,000 to acquire IP rights during the accounting year ended 31 December 2015. The amount of WDA claimable for YA 2016 is $160,000 (ie ($200,000 + $600,000 (300% × $200,000))/5 years).

Assume Company A incurred another $700,000 and $1m on IP rights during the accounting years ended 31 December 2016 and 31 December 2017 respectively.

The total WDA claimable by Company A is $5.5m, details as follows:

Basis year	Total WDA	Annual WDA	WDA period
2015	$800,000 (base allowance $200,000 + 300% enhanced allowance × $200,000)	$160,000	YA 2016 to YA 2020
2016	$2,800,000 ($700,000 + 300% × $700,000)	$560,000	YA 2017 to YA 2021

Basis year	Total WDA	Annual WDA	WDA period
2017	$1,900,000 ($1,000,000 + 300% × $300,000 (restricted, as combined expenditure cap of $1,200,000 for YA 2016 to YA 2018 applies))	$380,000	YA 2018 to YA 2022

For YA 2016, therefore, WDA	= $160,000
For YA 2017, WDA	= $160,000 + $560,000
	= $720,000
For each of the YAs from YA 2018 to YA 2020, WDA	= $160,000 + $560,000 + $380,000
	= $1,100,000
For YA 2021, WDA	= $560,000 + $380,000
	= $940,000
For YA 2022, WDA	= $380,000

Example 26

Company Y incurred capital expenditure of $900,000 to acquire IP rights during the accounting year ended 31 December 2013.

Assume that Company Y did not carry on any trade or business during the year ended 31 December 2012.

Total expenditure qualifying for WDA for YA 2014

100% × $900,000	= $900,000 (base allowance)
300% × $800,000 (combined expenditure cap is restricted to $800,000 under s 19B(1BB))	= $2,400,000 (enhanced allowance)
	$3,300,000

WDA for each YA from YA 2014 to YA 2018

= $3,300,000/5 (5-year writing down period)

= $660,000

Example 27

Company Y incurred capital expenditure of $900,000 to acquire IP rights during the accounting year ended 31 December 2016.

Assume that Company Y did not carry on any trade or business during the year ended 31 December 2015. Total expenditure qualifying for WDA for YA 2017

100% × $900,000	= $900,000 (base allowance)
300% × $800,000 (combined expenditure cap is restricted to $800,000 under s 19B(1BC))	= $2,400,000 (enhanced allowance)
	$3,300,000

WDA for each YA from YA 2017 to YA 2021

= $3,300,000/5 (5-year writing down period)

= $660,000

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IP rights for MDE content

To encourage Media and Digital Entertainment (MDE) businesses to actively exploit their IP rights for MDE content from Singapore, accelerated WDA has been granted for the acquisition of such rights. The writing-down period for WDA in respect of capital expenditure incurred by an approved MDE company in acquiring qualifying IP rights for MDE content is two years instead of the usual five years (s 19B(2C)).

The accelerated WDA will be granted on an approval basis for qualifying IP rights for MDE content acquired from 22 January 2009. Application has to be made to the EDB for approval for all cases, including cases where both economic and legal ownership of the IP rights for MDE content are acquired.

As announced in the 2014 Budget, to continue to build Singapore as an IP hub, the accelerated WDA for MDE content will be extended for three years to YA 2018. All other existing conditions of the WDA under s 19B remain unchanged.

IP rights acquired from a related party

Section 19B(10A) **prohibits** any WDA for IP rights which are:

(1) acquired from a related party to whom any deduction has been allowed under s 14, 14D, 14DA, 14E or 14S for the creation of those rights, and who is not chargeable to tax on the proceeds from the sale, transfer or assignment of those rights, and

(2) acquired from a related party who had acquired the rights, directly or indirectly, from the abovementioned related party.

A "related party" means any other person who, directly or indirectly, controls that person, or is controlled, directly or indirectly, by that person, or where he and that other person, directly or indirectly, are under the control of a common person (s 13(16)).

Cessation of IP rights

Where the IP rights come to an end before the end of the writing-down period, the amount of WDA previously granted is brought to tax as income in the basis period in which the rights cease. No further WDA on the IP will be granted to the company from the YA relating to the basis period in which the cessation of the rights occurs. Cessation of rights occurs when:

(a) the rights come to an end without being subsequently revived

(b) the company sells, transfers or assigns all or any part of those rights, or

(c) the company permanently ceases to carry on the trade or business (s 19B(4)).

Disposal of IP rights

When the IP rights are disposed of after the writing-down period, a BC equal to the lower of the amount of the sale proceeds or the capital expenditure incurred in acquiring the right will be made against the company (s 19B(5)).

Unabsorbed writing-down allowances

Unabsorbed WDA granted under s 19B may be transferred under the Group Relief Scheme (s 37C(14)), carried back under the Carry-back Relief Scheme (s 37E(9)) or carried forward for set-off against future income (s 35(2)).

¶8-320 Shared research and development expenditure

The writing-down period for qualifying capital expenditure incurred on R&D under an approved **cost-sharing agreement** (CSA) is as follows (s 19C(1)):

- one year for CSAs entered into on or after 17 February 2006 (ie 100% allowance), and
- five years for CSAs entered before 17 February 2006 (ie at 20% allowance per annum).

The one-year incentive is to encourage more R&D collaborations with Singapore-based companies.

The relevant R&D activities must have been for the purposes of the taxpayer's trade or business. Qualifying expenditure incurred before commencement of that trade or business is treated as having been incurred on the day of commencement (s 19C(4)).

The Minister has the power to specify the maximum amount of expenditure for which WDA will be granted. No allowance will be granted for payments made by a taxpayer to become a party of an existing CSA (s 19C(2) and 19C(3)).

Where the taxpayer receives royalties or other payments for the use of, or right to use any technology or know-how developed from the relevant R&D activities, such payments are deemed to be income derived from Singapore (s 19C(9)).

Upon disposal of the IP rights, the amount or the value of any consideration received will be treated as a taxable trading receipt (s 19C(6)). However, for agreements entered into on or after 17 February 2006, the taxable amount is restricted to the amount of WDA previously granted. For the disposal of IP rights under a CSA entered into before 17 February 2006, the full amount of the consideration is fully taxable.

Where a taxpayer, who has been granted WDA for a CSA entered into before 17 February 2006, ceases to carry on trade or business, an allowance equal to the remaining unallowed portion of the expenditure incurred under the CSA will be granted for the year of cessation (s 19C(12)).

With effect from YA 2012, expenditure incurred under R&D CSAs is also eligible for PIC deduction. The qualifying expenditure will be deemed to be 60% of the shared costs and will count towards the overall expenditure cap for R&D activity.

R&D is defined in s 2 of the Act as "any systematic, investigative and experimental study that involves novelty or technical risk carried out in the field of science or technology with the object of acquiring new knowledge or using the results of the study for the production or improvement of materials, devices, products, produce, or processes" but does not include the following activities:

(a) quality control or routine testing of materials, devices or products

(b) research in the social sciences or the humanities

(c) routine data collection

(d) efficiency surveys or management studies

(e) market research or sales promotion

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(f) routine modifications or changes to materials, devices, products, processes or production methods, or

(g) cosmetic modifications or stylistic changes to materials, devices, products, processes or production methods.

¶8-330 Payments for indefeasible rights of use

To encourage telecommunication carriers to hub their networks in Singapore, WDA are granted to a person carrying on a TBP who has incurred capital expenditure for the acquisition of an indefeasible right to use any international telecommunications submarine cable system (referred to as indefeasible rights of use (IRU)) for the purposes of that TBP (s 19D(1)). Capital expenditure incurred by a person for the acquisition of any IRU before his TBP commences is treated as having been incurred on the date of commencement (s 19D(5)).

"Capital expenditure" excludes legal fees, registration fees, stamp duty and other costs related to the acquisition of any IRU. An "international telecommunications submarine cable system" means an international submarine cable that is laid in the sea and includes its cable landing station and any other equipment ancillary to the submarine cable system (s 19D(15)).

The writing-down period is the number of years for which the IRU is acquired beginning with the YA relating to the basis period in which the capital expenditure for the acquisition of the IRU is incurred (s 19D(2)).

The WDA are granted only if the international telecommunications submarine cable system is in use at the end of the respective basis period. They are calculated as the amount of capital expenditure incurred for the acquisition of the IRU divided by the writing-down period for the IRU (s 19D(4)).

If WDA have been granted in respect of any IRU and, before or at the end of the writing-down period for the IRU, any of the following events occurs, no further WDA will be made from the YA relating to the basis period in which the event occurs:

(a) the IRU comes to an end without subsequent renewal by the person

(b) the person permanently ceases to carry on the relevant TBP

(c) the person sells, transfers or assigns all the IRU or so much of it as he still owns, or

(d) the person sells, transfers or assigns part of the IRU and the amount or value of any consideration less any decommissioning cost for the sale, transfer or assignment is not less than the amount of capital expenditure remaining unallowed for the IRU (s 19D(6)).

In event (b) above, the IRU is deemed to have been sold at the open-market price on the date of permanent cessation of use (s 19D(7)). Any sale, transfer or assignment of any IRU that occurs after the date on which a relevant TBP permanently ceases is deemed to have occurred immediately before the cessation (s 19D(14)). And if the sale, transfer or assignment of all or part of any IRU is made at less than the open-market price, it is deemed to have been made for open-market price (s 19D(12)).

Where WDA in respect of any IRU have been made to any person and the person sells, transfers or assigns any part of the IRU, WDA may be granted for the YA relating to the basis period in which the sale, transfer or assignment of the IRU occurs or any subsequent YA, subject to certain conditions (s 19D(10)). Where a BC arises, a restriction on the amount may apply as set out in s 19D(11).

For the background to s 19D and worked examples, see IRAS e-Tax Guide "Writing Down Allowance on Payment for Indefeasible Right of Use", published on 24 March 2014.

As announced in the 2015 Budget, to ensure that the relevance of the scheme is reviewed periodically, a review date of 31 December 2020 will be legislated for this scheme.

¶8-400 CAs for assets used in the production of exempt income and income chargeable with tax

Where assets that qualify for any kind of CAs have been used to produce both exempt income and income chargeable with tax, the Comptroller is empowered to grant CAs for such assets against each income for the YA concerned in such proportion as appears to him reasonable in the circumstances, unless otherwise provided for in the Act or the EEIA. Thus, the IBA may be apportioned and made against each income where the trade, for which purpose the industrial building is used, produces both exempt income and income chargeable with tax (s 16(13)). The apportionment rule applies similarly to:

(a) CAs on machinery or plant used for the purposes of a TBP (s 19(5A) and 19A(14A)), and

(b) WDA for:

  (i) IP rights for use in a trade or business (s 19B(6A))

  (ii) R&D expenditure under an approved CSA for the purposes of the relevant trade or business (s 19C(10)), and

  (iii) capital expenditure for the acquisition of an IRU for the purpose of the relevant TBP (s 19D(13)).

Where a BA or BC or a deemed trading receipt arises (as the case may be), the Comptroller is allowed to apportion the amount against the exempt income and the income chargeable with tax as appears reasonable to him in the circumstances. Thus, where any BA or BC falls to be made in relation to an industrial building, an item of machinery or plant, or to IRUs (s 17(7), 19D(14) and 20(6A)):

(a) the BA will be apportioned and made against each income, and

(b) such proportion of the BC will be exempt from tax.

In a similar manner, a proportion of the BC arising under s 19B(4) or 19B(5) (in the context of IP rights) and a proportion of the trading receipt treated to have arisen under s 19C(6)(d) (in the context of approved CSAs) will be tax exempt as appears reasonable to the Comptroller in the circumstances.

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¶8-500 CAs in the calculation of statutory income

General treatment

Section 35 provides that the income of any person for each YA ("statutory income") shall be the full amount of the person's income for the year preceding the YA from each source of income after deducting CAs, if any. CAs are set off, firstly against the income of the TBP in respect of which they are granted, in the following order (s 22A):

(a) CAs for previous YAs brought forward to the current YA, on a first-in-first-out basis, and

(b) CAs for the current YA.

If any amount of CAs remains after the above set-off, the remaining amount of CAs is then set off against other sources of income for the current YA. In the calculation of statutory income, the CAs under s 35(2) are to be deducted in the following order:

(a) firstly, against income from any TBP or vocation, and

(b) secondly, against income from any other source (s 35(2A)).

Any amount of CAs that are not set off against income for the current YA will form the company's unabsorbed CAs to be carried forward to the next succeeding YA. The company can carry forward these unabsorbed CAs if it satisfies the conditions under s 23 (see ¶9-100 and ¶9-400). Where a company is a member of a group for purposes of the loss transfer system of group relief (s 37C; see ¶9-700), the company can transfer any CAs for the current YA that remains after setting off against other sources of income. CAs for previous YAs cannot be transferred under the loss transfer system of group relief.

Exceptions

There are exceptions to the general rule that CAs are to be set off firstly against the income of the TBP in respect of which they are granted and any excess could then be set off against other sources of income for the current YA.

In the case of a person who derives income from letting out an industrial building or structure, any IBA granted have to be set off against that rental income whether assessed under s 10(1)(a) or 10(1)(f) before any excess can be set off against other income. Any unabsorbed IBA can be carried forward to subsequent YAs if the person continues to derive such income (s 23(2)) and satisfies the other conditions in s 23.

For a person who derives income from the use of a building or structure for a qualifying trade and also income from letting it out to a tenant who carries on its (ie the latter's) qualifying trade, it would appear that IBA are to be granted to the person by being set off against the income derived by him from that trade before being set off against the rental income (s 35(2A)).

For persons carrying on the following activities, the manner in which CAs are to be set off in the calculation of statutory income would differ from the general treatment:

- the business of hiring out motor cars or providing driving instructions (s 10H), and
- the business of the making of investments, which includes the business of letting immovable properties (s 10E).

In these instances, the CAs granted on expenditure incurred on the provision of plant and machinery can be set off only against the income derived from that business. Any amount of CAs in excess of such business income cannot be set off against other sources of income of the person for that YA. Any unabsorbed CAs for the current YA do not qualify for the loss transfer system of group relief.

¶8-600 Sixth Schedule of the Act: Number of years of working life of assets

Item	*Number of years of working life of asset*
Aircraft	5
Bank vaults	16
Building and construction equipment (including assets such as rollers, mixers, piling and drilling plants, loaders, dumpers, excavators, bulldozers and support structure)	6
Cable cars and equipment	12
Cables and related assets	16
Containers used for the carriage of goods by any mode of transportation	10
Electric, gas, water and steam, utility plant (including tanks and generators)	16
Electrical equipment (including assets such as electrical and industrial apparatus, domestic and commercial appliances, air-conditioning and ventilating equipment)	8
Electronic equipment (including assets such as electronic detection, guidance, control, radiation, computation, test and navigation equipment)	8
Equipment used in personal and professional services (including assets used in the provision of personal and professional services which are not elsewhere classified)	10
Farming equipment	8
Fire safety device	10
Floating and dry docks	16
Gas cylinders	16
Manufacturing and industrial processing plant and machinery	6
Materials and passenger handling equipment (including assets such as lifts, escalators, weighing machines, conveyor belts, forklifts, lifting gears, trolleys and cranes)	6
Motion picture films	5
Musical instruments and other related assets	10
Office equipment:	
Furniture and fixtures (including furniture and fixtures which are not a structural component of a building)	10
Data handling equipment (including typewriters, calculators, adding and accounting machines, copiers and duplicating equipment)	8
Telecommunication equipment	10

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Item	Number of years of working life of asset
Plant for recreation and amusement purposes (including assets used in the provision of entertainment services on payment of a fee or admission charge, as in the operation of bowling alleys, billiard and pool establishments, theatres, cinemas, concert halls, amusement parks and miniature golf courses)	10
Railway wagons, lines and related equipment	16
Transport equipment:	
Buses	6
Business service passenger vehicles	6
Taxis	5
Trucks, lorries, trailers and vans	6
Motorcycles and bicycles	8
Vessels, barges, tugs and similar water transportation equipment	16
Wholesale and retail trade service assets (including assets used in such activities as the operation of restaurants and cafés)	8

CHAPTER 9

TAXATION OF BUSINESSES

The taxation of various types of income is examined in Chapter 3 (at ¶3-100ff) to Chapter 6 (at ¶6-000ff) and Chapter 10 (at ¶10-100ff). Chapter 7 (at ¶7-100ff) examines the deduction rules while Chapter 8 (at ¶8-100ff) examines capital allowances.

This chapter looks at how a business is, as a whole, being taxed. ¶9-000 sets out how the chargeable income and the tax liability of a person carrying on a trade, business or profession (TBP) are calculated. For an individual who carries on business through a sole proprietorship or partnership, his taxable income from the business will be assessed in his own name.

¶9-100 to ¶9-300 examine the situation where, in any year of assessment (YA), a company has insufficient or no income against which its capital allowances, business losses and/or donations can be set off. These paragraphs respectively discuss the tax rules relating to the utilisation of:

- unabsorbed capital allowances
- unabsorbed losses, and
- unabsorbed donations.

The rules for capital allowances and losses discussed in this chapter generally apply to income derived from a TBP by a company, partnership or sole proprietorship. Note that capital allowances are not available to a person carrying on a vocation.

To qualify for the carry-forward of any unabsorbed capital allowances, losses and/or donations, a taxpayer (if it is a company) has to satisfy the Comptroller of Income Tax (the "Comptroller") that there is no substantial change in the shareholders and their respective shareholdings as at the relevant comparison dates. This test is called the "shareholders' continuity" test (also referred to as "continuity of ownership" test or "substantial shareholdings" test). It is discussed in ¶9-400.

To qualify for the carry-forward of unabsorbed capital allowances, another test has to be satisfied: the person must be carrying on the same TBP in respect of which the allowances arose. This test is generally described as the "business continuity" test (see ¶9-100).

¶9-500 examines the loss transfer system of group relief, which took effect from YA 2003. Subject to conditions, a member company of a group can transfer its current year capital allowances, losses and donations to another member company of the same group for set-off against the latter's assessable income.

¶9-600 examines the transfer of qualifying deductions between spouses (effective from YA 2005).

¶9-700 examines the carry-back scheme (effective from YA 2006).

¶9-800 sets out the tax treatment where capital allowances, losses and/or donations relate to income that is subject to different tax rates.

¶9-950 contains a sample corporate tax computation.

In the case of a registered business trust, the utilisation of unabsorbed capital allowances, losses and donations, and the application of group relief rules are discussed in ¶16-300.

¶9-000 Calculating chargeable income and tax liability

A person's tax liability for any YA depends on his residency status (see ¶2-600) and chargeable income (see ¶2-300). A person's residency status would determine the tax rate(s) to be applied to the chargeable income and whether any tax exemption applies.

The following is a general description of the steps taken to calculate the chargeable income and tax liability of a person carrying on a TBP. The following does not apply, for example, to a non-resident company whose income in Singapore is subject to a final tax (see Chapter 13 at ¶13-100ff). See also the sample tax computation of a company (at ¶9-950):

(1) Calculate the tax-adjusted profit from the TBP before capital allowances (by making the following tax adjustments to the "net accounting profit before taxation" in the profit and loss (P&L) account):

   (i) Deduct any non-s 10(1)(a) income (ie separate sources of income) that is credited to the P&L account (eg passive interest income derived by a retail company).

   (ii) Deduct any non-taxable items that are credited to the P&L account (eg profit of a capital nature).

   (iii) Add any taxable s 10(1)(a) items (if any) not credited to the P&L account.

   (iv) Add any non-deductible items that are charged to the P&L account (eg depreciation).

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(v) Deduct any deductible expenses that are not charged to the P&L account (eg renovation and refurbishment (R&R) costs that have been capitalised in the accounts and that qualify for s 14Q special deduction).

(vi) Deduct the amount of further/enhanced deduction for any expenses, where applicable (eg approved trade fair expenses under s 14B).

(vii) Add balancing charges, if any.

(2) Calculate the tax-adjusted profit from the TBP after capital allowances by deducting the capital allowances in the following order:

- any unabsorbed capital allowances from prior YAs on a first-in first-out (FIFO) basis, and
- capital allowances (including balancing allowances) for the current YA.

(3) Calculate statutory income, which is the full amount of the person's income for the year preceding the YA from each source of income (ie TBP and all other sources of income) after deducting capital allowances (including the amount of capital allowances that is not fully deducted under Step 2 (s 35(1)).

Note that statutory income excludes exempt income (eg Singapore exempt one-tier dividends).

Where there is any balance of capital allowances remaining unabsorbed as a result of applying Step 3, statutory income will be shown as zero.

(4) Calculate assessable income, which is the remainder of the statutory income after deducting:

(i) any unabsorbed TBP losses for prior years on a FIFO basis, then

(ii) any unabsorbed TBP losses for the current year, and finally

(iii) any approved donations on a FIFO basis (ie prior years' donations followed by current year's donations) (s 37).

Under s 37(4), prior year TBP or vocation losses are to be set off in the following order:

(i) against the statutory income from the same TBP or vocation

(ii) against the statutory income from any other TBP or vocation, and

(iii) against the statutory income from any other source.

The available options for utilising the remaining unabsorbed TBP losses are discussed in ¶9-200.

In the case of a company, technically its assessable income equals its chargeable income (s 38). With the introduction of the partial/enhanced tax exemption schemes for companies, however, Step 5 becomes necessary.

Where a company is entitled to investment allowances given under the *Economic Expansion Incentives (Relief from Income Tax) Act (Cap 86)* (the "EEIA") (see ¶19-410), the investment allowances are deducted in arriving at chargeable income.

(5) Calculate the chargeable income after deducting the exempt amount given under:

(i) the partial tax exemption scheme for existing companies (s 43(6)) (see ¶2-850), or

(ii) the enhanced tax exemption for new companies (s 43(6A)) (see ¶2-900).

[In the case of an individual who is resident in Singapore, his chargeable income is the amount of his assessable income (arrived at in Step 4) after deducting personal reliefs (see Chapter 12 at ¶12-100ff).]

(6) Calculate the person's tax liability by applying the relevant tax rate(s) to the chargeable income calculated in Step 5.

(7) Where the person (usually a company) qualifies for foreign tax credit on foreign income received in Singapore, calculate his net tax liability (net tax payable) by deducting the amount of foreign tax credit from the amount calculated in Step 6 (see Chapter 14 at ¶14-100ff).

¶9-100 Unabsorbed capital allowances

The tax treatment of capital allowances in calculating statutory income is covered in ¶8-500. This paragraph discusses the tax treatment where there is an excess of capital allowances over the income of the TBP in respect of which the allowances were granted. The excess capital allowances must be set off against the total amount of income from all the other sources for the year preceding the YA, as illustrated in Example 1.

Example 1

ABC Company — Income Tax Computation

	$	$
Tax adjusted profit — s 10(1)(a)		38,000
Less: Capital allowances		
Prior year's capital allowances	17,000	
Current year's capital allowances	28,000	45,000
Excess of current year's capital allowances		(7,000)
Interest income — s 10(1)(d)		5,000
Net rental income — s 10(1)(f)		10,000
Statutory income		8,000

Where a person's gains or profits chargeable for the YA are insufficient to fully set off the capital allowances available in that YA, there are three options available to the taxpayer. These options are discussed separately:

- for companies, and
- for sole proprietors and partners.

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Companies

The options available to a company are as follows (conditions apply):

(1) transfer the current year unabsorbed capital allowances to a claimant company under group relief (upon election, see ¶9-500)

(2) carry back any current year unabsorbed capital allowances up to a specified amount for set-off against its assessable income for the immediate preceding YA (upon election, see ¶9-700), or

(3) carry forward any remaining unabsorbed capital allowances to future years (s 23(1)).

Note that the carry-forward relief is mandatory. If, for example, there is taxable income for YA 2015, the person cannot elect to utilise his unabsorbed capital allowances only in YA 2016.

The carry-forward of the unabsorbed capital allowances is subject to two conditions:

(1) the company continues to carry on the same TBP in respect of which the allowances arose (ie "business continuity" test), and

(2) there is no substantial change in the company's shareholders and their shareholdings as at the relevant dates (ie the "shareholders' continuity" test).

Because of the need to determine whether condition (2) is satisfied for purposes of the carry-forward, the company has to keep track of the YAs to which the unabsorbed capital allowances relate (see ¶9-400).

Sole proprietors and partners

Similar options are available to a sole proprietor or a partner whose gains or profits chargeable for any YA are insufficient to fully set off the capital allowances available in that YA. They are as follows (conditions apply):

(1) transfer any current year unabsorbed capital allowances for set-off against the spouse's assessable income for the same YA (this rule ceases to apply from YA 2016) (see s 37D; ¶9-600)

(2) carry back any current year unabsorbed capital allowances up to a specified amount for set-off against his own assessable income and/or his spouse's assessable income for the immediate preceding YA (From YA 2016, carry back to set off the spouse's assessable income will cease to apply) (see s 37F; ¶9-700), or

(3) carry forward any remaining unabsorbed capital allowances to future years (s 23(1)).

The carry-forward of unabsorbed capital allowances is subject to the condition that the sole proprietor/partnership continues to carry on the same TBP in respect of which the allowances arose.

Note that the capital allowances of a partnership are allocated to the partners in accordance with the agreed profit-sharing ratio (see ¶11-210).

Business of hiring out motor cars or of providing driving instruction using motor cars

Any capital allowances relating to the business of hiring out motor cars or of providing driving instruction using motor cars can only be deducted from income derived from such business (s 10H(1)(b)). Accordingly, any unabsorbed capital allowances arising from such business cannot be:

(i) deducted against any other income within the same year

(ii) transferred under group relief (s 37C), or

(iii) transferred between spouses (s 37D).

Unabsorbed capital allowances can be carried forward for set-off against future year's income from the same business, subject to two conditions:

(a) the person carries on the same business, and

(b) there is not more than 50% change in the shareholders and their shareholdings as at the relevant dates (in the case of a company).

¶9-200 Unabsorbed losses

Section 37(3)(a) provides that a person who has incurred a loss can deduct that loss from his statutory income (ie the total of income from all sources, after deduction of capital allowances) if the following conditions are satisfied:

(a) the loss must arise from the carrying on of a TBP or vocation, ie s 10(1)(a) source (therefore, any loss arising from non-s 10(1)(a) sources is not eligible for deduction)

(b) the loss must also be of a nature that, if it had been a profit, would have been taxable, and

(c) the loss has not been allowed against statutory income of a prior YA.

Under the carry-forward relief, the deduction of unabsorbed loss from a TBP or vocation is allowed in the year in which the loss was sustained and subsequent years. Thus, if a loss was incurred by a taxpayer in the year ended 31 December 2013, the loss will be utilised first against the statutory income (if any) for YA 2014.

Where the current year loss cannot be fully utilised in the relevant YA, there are three options available to the taxpayer. These options are discussed separately below:

- for companies, and
- for sole proprietors and partners.

Companies

The options available to a company are (conditions apply):

(1) transfer the current year unabsorbed loss to a claimant company under group relief (upon election; see ¶9-500)

(2) carry back the current year unabsorbed loss up to a specified amount for set-off against its assessable income for the immediate preceding YA (upon election; see ¶9-700), or

(3) carry forward any remaining current year unabsorbed loss for set-off against the statutory income in future years (s 37(5)).

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The loss can be carried forward indefinitely. However, it must be deducted in the first available year where there is statutory income (s 37(5)). Note that the carry-forward relief is mandatory. If, for example, there is statutory income for YA 2015, the person cannot elect to utilise his unabsorbed loss only in YA 2016.

Prior-year unabsorbed losses are deducted on a FIFO basis before the current year loss can be deducted (s 37(3)(a)).

To qualify for carry-forward of unabsorbed losses, there must be no substantial change in the company's shareholders and their shareholdings as at the relevant dates (ie the "shareholders' continuity" test must be satisfied).

Sole proprietors and partners

A sole proprietor can deduct any current year loss arising from his TBP or vocation against his other sources of income. Where a partnership incurs a loss, that loss is allocated to each partner according to the agreed profit-sharing ratio (see ¶11-210). Each partner can then deduct his share of the partnership loss against his other sources of income.

Where the current year loss cannot be fully utilised in that YA, the sole proprietor or partner has the following three options (conditions apply):

(1) transfer the current year unabsorbed loss for set-off against his spouse's assessable income for the same YA (this rule ceases to apply from YA 2016) (s 37D; see ¶9-600)

(2) carry back the current year loss up to a specified amount for set-off against his own assessable income or his spouse's assessable income for the immediate preceding YA (From YA 2016, carry back to set off the spouse's assessable income will no longer apply) (s 37F; see ¶9-700), or

(3) carry forward any remaining unabsorbed loss for set-off against his statutory income in future years (see ¶9-200).

If a partner withdraws from a partnership, he is still entitled to set off any unabsorbed loss against his own statutory income for future years.

Business of hiring out motor cars or of providing driving instruction using motor cars

All outgoings and expenses incurred for the business of hiring out motor cars or of providing driving instruction using motor cars can only be deducted from income derived from such business (s 10H(1)(a)). This means that any loss arising from such a business: Chapter

(i) is not deductible against any other income within the same year

(ii) is not available for transfer under group relief (s 37C), and

(iii) is not available for transfer between spouses (s 37D).

However, the loss can be carried forward for set-off against future years' income from the same business, subject to the shareholders' continuity test (in the case of a company).

¶9-300 Unabsorbed donations

The types of donations that qualify for deduction under s 37(3) are discussed in ¶7-900. Donations are deductible to the extent that they do not exceed the taxpayer's statutory income for the relevant YA after deducting s 10(1)(a) losses, if any (s 37(7)).

Subject to conditions, current year unabsorbed donations can be:

(i) transferred under group relief, or

(ii) carried forward for up to five years for set-off against future years' statutory income (after deducting s 10(1)(a) losses) (s 37(8)).

The rules for the transfer of current year unabsorbed donations under group relief are similar to those for the transfer of current year unabsorbed capital allowances and losses. A company can transfer its current year unabsorbed donations to a claimant company under group relief (conditions apply) (see ¶9-500). An individual can transfer any such unabsorbed donations to his spouse living with him (this rule ceases to apply from YA 2016) (see s 37D; ¶12-100).

To qualify for carry-forward of unabsorbed donations, a company has to satisfy the "shareholders' continuity" test (s 37(12)) (¶9-400).

¶9-400 "Shareholders' continuity" test for a company

As a condition for the carry-forward of unabsorbed capital allowances, unabsorbed losses and unabsorbed donations, a company must satisfy the shareholders' continuity test. This test applies whether the company is resident or non-resident in Singapore, public or private.

Capital allowances for prior YAs can be carried forward and utilised only if the Comptroller is satisfied that the shareholders of the company on the last day of the YA in which the allowances arose were substantially the same as the shareholders of the company on the first day of the YA in which the allowances would otherwise be available for relief (s 23(4)).

Similarly, losses and donations for prior years can be carried forward and utilised only if the Comptroller is satisfied that the shareholders of the company on the last day of the year in which the loss was incurred or the donation was allowable were substantially the same as the shareholders of the company on the first day of the YA in which such loss or donation would otherwise be deductible (s 37(12)).

Where the shareholders' continuity test is not met, the unabsorbed capital allowances, losses and/or donations concerned will be permanently disregarded for the YA in question and will not be allowed for all subsequent YAs (s 23(4) and 37(12)), unless a waiver of the test has been obtained (s 23(5) and 37(15)) (see below).

The concept of "relevant dates" for comparison and the test of "substantially the same shareholders" on those dates (ie the shareholders' continuity test) are discussed in the following paragraphs.

Relevant dates

The company has to satisfy the Comptroller that its shareholders are substantially the same as at the relevant dates. It does not matter how the shareholders and their shareholdings might have changed during the period between the relevant dates.

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The relevant dates for carry-forward of *capital allowances* are (s 23(4)):

- the last day of the YA (ie 31 December) in which the allowances arose, and
- the first day of the YA (ie 1 January) in which the allowances would otherwise be available.

The relevant dates for carry-forward of *losses and donations* are (s 37(12)):

- the last day of the year (ie 31 December) in which the loss was incurred or the donation was made, and
- the first day of the YA (ie 1 January) in which the loss or donation would otherwise be deductible.

Example 2

Company L prepares its accounts each year to 30 June.

For the year ended 30 June 2014, Company L's tax-adjusted loss was $500,000, and capital allowances claimed for YA 2015 were $150,000.

Assume that:

(i) group relief does not apply, and

(ii) Company L did not elect to carry back the unabsorbed capital allowances and loss to YA 2014 (see ¶9-700).

As long as Company L carries on the same trade or business, the unabsorbed capital allowances can be carried forward to future years. The unabsorbed capital allowances and losses can be carried forward to YA 2016 if there are no substantial changes in the shareholders and their shareholdings as at the following dates:

- For capital allowances:
  - 31 December 2015 (last day of the YA in which the allowances arose, ie YA 2015), and
  - 1 January 2016 (first day of the YA in which the allowances can be claimed, ie YA 2016), and
- For losses:
  - 31 December 2014 (last day of the year (ie calendar year 2014) in which the loss was incurred), and
  - 1 January 2016 (first day of the YA in which the loss can be deducted, ie YA 2016).

If the unabsorbed capital allowances and loss are not fully utilised in YA 2016, the balances can be carried forward for set-off against the YA 2017 income, if the shareholders' continuity test is satisfied as at both relevant dates:

- For capital allowances:
  - 31 December 2015 (last day) and 1 January 2017 (first day), and
- For losses:
  - 31 December 2014 (last day) and 1 January 2017 (first day).

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Shareholders substantially the same

The shareholders' continuity test requires that the same shareholders (shares held either directly or beneficially) at both relevant dates must own at least 50% of the company's total number of issued shares (s 23(7)(a) and 37(14)(a)). If this test is not satisfied, the unabsorbed capital allowances, losses and/or donations would be disregarded permanently unless a waiver of the test has been obtained (s 23(5) and 37(15)) (For the tax consequences of such a waiver, see below).

Where a company with unabsorbed capital allowances, losses and/or donations ("loss company") is a subsidiary, the shareholders and the shareholdings of its holding company have to be examined to determine whether the test is satisfied. Where the shares of a company are held by or on behalf of another company, the shares are deemed to be held by the shareholders of the last-mentioned company (s 23(7)(b) and 37(14)(b)). The Inland Revenue Authority of Singapore's (IRAS) view is that the test is to be applied by tracing all the way to determine the ultimate shareholders of the loss company.

(See IRAS e-Tax Guide "Utilising Unabsorbed Capital Allowances, Trade Losses and Donations", published on 29 June 2012. This e-Tax Guide consolidates the following three previous e-Tax Guides on utilising unabsorbed capital allowances, trade losses and donations:

(1) "Carry-forward of Losses and Capital Allowance", published on 17 July 1993

(2) "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", published on 28 December 1995, and

(3) "Simplification of Income Tax Rules and Procedures for Companies — Set-off of Carry-forward Losses, Donations and Allowances under Sections 37(12) and 23(4) of the Singapore Income Tax Act" (Revised Ed 2004), published on 28 April 2004.)

Shares held by or on behalf of the trustee of the estate of a deceased shareholder or by or on behalf of the person entitled to those shares as beneficiaries under the will or intestacy of a deceased shareholder are deemed held by the deceased shareholder (s 23(7)(c)).

For purposes of applying the shareholders' continuity test, any part of a share of a shareholder that is not fully paid up is disregarded. The part to be disregarded is the unpaid amount of the share divided by the total amount payable in respect of the share (s 23(8) and 37(15)).

Example 3: Capital allowances

Domino Ltd makes up its accounts to 31 March each year. It has unabsorbed capital allowances for YA 2013 and YA 2014 of $225,000 and $300,000 respectively. Assume that Domino Ltd is still in the same business.

The information below is relevant for the respective years.

Accounts to	*Profits (capital allowances)*	*Shareholdings as at*	*Shareholders (100 shares each, all fully paid)*
31 March 2014	$450,000	31 December 2014	X:Y:Z
	($200,000)	1 January 2015	X:Y:Z
31 March 2015	$250,000	31 December 2015	X:Y:Z
	($175,000)	1 January 2016	X:Y:Z
31 March 2016	$650,000	31 December 2016	X:A:B
	($125,000)	1 January 2017	X:A:B

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There has been no change in the shareholders and their shareholdings since incorporation until 1 October 2016 when shareholders Y and Z sold all their shares to shareholders A and B respectively.

YA 2015 (Basis period 1 April 2013–31 March 2014)

The unabsorbed capital allowances from YA 2013 and YA 2014 can be utilised in YA 2015, as the same shareholders X, Y and Z held 100% of the issued shares as at the relevant dates:

- YA 2013 capital allowances b/f — 31 December 2013 and 1 January 2015
- YA 2014 capital allowances b/f — 31 December 2014 and 1 January 2015

The "shareholders' continuity" test is satisfied as shareholders X, Y and Z held 100% of the shares as at the relevant dates. The capital allowances brought forward are deducted against the YA 2015 profits on a FIFO basis (s 35(3)).

	$	$
Adjusted profits		450,000
Less: YA 2013 capital allowances b/f	225,000	
YA 2014 capital allowances b/f	225,000	450,000
Chargeable income		Nil
Unabsorbed capital allowances carried forward to YA 2016:		
YA 2014 allowances (ie $300,000 – $225,000)		75,000
YA 2015 capital allowances		200,000
Total		275,000

YA 2016 (Basis period: 1 April 2014–31 March 2015)

For YA 2016, the relevant dates are:

- YA 2014 capital allowances b/f — 31 December 2014 and 1 January 2016
- YA 2015 capital allowances b/f — 31 December 2015 and 1 January 2016

Again, the "shareholders' continuity" test is satisfied as X, Y and Z held 100% of the shares as at the relevant dates. The capital allowances brought forward are deducted against the YA 2016 profits on a FIFO basis:

	$	$
Adjusted profits		250,000
Less: YA 2014 capital allowances b/f	75,000	
YA 2015 capital allowances b/f	175,000	250,000
Chargeable income		Nil
Unabsorbed capital allowances carried forward to YA 2017:		
YA 2015 capital allowances (ie $200,000 – $175,000)		25,000
YA 2016 capital allowances		175,000
Total		200,000

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YA 2017 (Basis period: 1 April 2015–31 March 2016)

For YA 2017, the relevant dates are:

- YA 2015 capital allowances b/f — 31 December 2015 and 1 January 2017
- YA 2016 capital allowances b/f — 31 December 2016 and 1 January 2017

The YA 2015 unabsorbed allowances of $25,000 are disregarded as Domino Ltd has failed the "shareholders' continuity" test. This is because the only common shareholder X as at both relevant dates (31 December 2015 and 1 January 2017) held less than 50% of the total number of issued shares on those dates.

The YA 2016 unabsorbed allowances of $175,000 can be deducted against the YA 2017 income as Domino Ltd satisfies the shareholders' continuity test. This is because the common shareholders (ie X, A and B) held 100% of the shares as at 31 December 2016 and 1 January 2017.

The chargeable income for YA 2017 is calculated as follows:

		$	$
Adjusted profits			650,000
Less:	YA 2016 capital allowances b/f	175,000	
	YA 2017 capital allowances	125,000	300,000
Chargeable income before exempt amount			350,000
Less:	Exempt amount (s 43(6))		152,500
Chargeable income after exempt amount			197,500

Example 4: Losses

Company L makes up its accounts to 30 June each year. It incurred business losses for the years ended 30 June 2012 and 30 June 2013 as shown below. Company L's shareholders and their shareholdings as at specified dates are also given below:

Accounts to	*Statutory income (Losses)*	*Shareholdings as at*	*Shareholders (1,000 shares each, all fully paid)*
30 June 2012	($150,000)	31 December 2012	X:Y:Z
30 June 2013	($200,000)	31 December 2013	X:Y:Z
30 June 2014	$250,000	31 December 2014	X:Y:Z
		1 January 2015	X:Y:Z
30 June 2015	$475,000	31 December 2015	X:A:B
		1 January 2016	X:A:B

There has been no change in the shareholders and their shareholdings until 1 October 2015 when shareholders Y and Z sold all their shares to shareholders A and B respectively.

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YA 2015 (Basis period: 1 July 2013–30 June 2014)

The losses of $150,000 and $200,000 for the years ended 30 June 2012 and 30 June 2013 respectively are deductible in YA 2015. This is because the common shareholders (ie X, Y and Z) as at the following relevant dates held 100% of the shares on those dates:

Loss for year ended 30 June 2012	—	31 December 2012 and 1 January 2015
Loss for year ended 30 June 2013	—	31 December 2013 and 1 January 2015

The company's tax position is as follows:

		$	$
Statutory income			250,000
Less:	Loss for the year ended 30 June 2012	150,000	
	Loss for the year ended 30 June 2013	100,000	
			250,000
Chargeable income			Nil
Unabsorbed loss for the year ended 30 June 2013 c/f (ie $200,000 – $100,000)			100,000

YA 2016 (Basis period: 1 July 2014–30 June 2015)

The balance of loss for the year ended 30 June 2013 is not available for set-off in YA 2016, as Company L has failed the "shareholders' continuity" test. This is because the only common shareholder X as at both the relevant dates (31 December 2013 and 1 January 2016) held only 33.33% (ie less than 50%) of the total number of issued shares on those dates.

		$
Chargeable income before exempt amount		475,000
Less:	Exempt amount (s 43(6))	(152,500)
Chargeable income after exempt amount		322,500

Proving that shareholders are "substantially the same"

When a company seeks to utilise its unabsorbed capital allowances, losses and/or donations, it has to satisfy the Comptroller that there is no substantial change in its shareholders and their shareholdings. The Comptroller normally requires the company to furnish a certificate from its external auditors to confirm that there is no substantial change in its ultimate shareholders on the relevant dates. Difficulties may arise in determining whether the shareholders of the company are "substantially the same", particularly if the period of time between the two relevant dates is long.

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For the administrative procedure with regard to the carry-forward of capital allowances, losses and donations, see IRAS e-Tax Guide "Utilising Unabsorbed Capital Allowances, Trade Losses and Donations", published on 29 June 2012.

Public listed companies

The Comptroller recognises that for a public listed company, or for a company whose ultimate parent company is a public listed company, there may be difficulties in furnishing an external auditors' certificate. A public listed company whose shares are actively traded on a stock exchange may face difficulties when attempting to identify its beneficial shareholders. For such a company, the Comptroller may accept a certificate from the external auditor or the company secretary confirming that no merger or takeover of the company has taken place between the relevant dates (both dates inclusive).

In the absence of such a certificate from the external auditor or the company secretary, the Comptroller will accept a similar certificate from:

- the company's audit committee
- the company's financial controller, or
- a director of the company,

  confirming that no merger or takeover of the company has taken place between the relevant dates (both dates inclusive).

Other companies

A company (other than a public listed company) could:

(a) provide a list of its ultimate shareholders and their respective shareholdings on the relevant dates (both dates inclusive) to show that there has been no substantial change in its ultimate shareholders on those dates, or

(b) produce a certificate from its external auditor or company secretary confirming that there is no substantial change in its ultimate shareholders as at the relevant dates.

In the absence of a certificate from the external auditor or the company secretary, the Comptroller will similarly accept a confirmation from the following person that there is no substantial change in its ultimate shareholders as at the relevant dates:

- the company's audit committee
- the company's financial controller, or
- a director of the company.

Waiver of "shareholders' continuity" test

Where there is a substantial change in the shareholders of a company and that change is not for the purpose of deriving any tax benefit or obtaining any tax advantage, the company with unabsorbed capital allowances, losses and/or donations can apply to the Comptroller for a waiver of the "shareholders' continuity" test (s 23(5) and 37(15)).

The IRAS has clarified that, generally, a substantial change of shareholders brought about by the following situations will be regarded as not being for the purpose of deriving a tax benefit:

(a) nationalisation or privatisation of a government-owned enterprise

(b) normal trading of shares of the company or shares of its holding company on a recognised stock exchange, and

(c) change carried out for genuine commercial reasons and was not tax-motivated, eg as part of a company rescue package.

(See IRAS e-Tax Guide "Utilising Unabsorbed Capital Allowances, Trade Losses and Donations", published on 29 June 2012.)

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The Board of Review has ruled that there can be circumstances other than those set out in the IRAS e-Tax Guide that are not driven by tax considerations.

In *KKFI v CIT* (2011) MSTC ¶50-005, the taxpayer was a company involved in the trading of pork and pork products and the production of pig feed. It was a member of a group of companies which was a family business. AS, AS's brother and father effectively owned 33% each of the company; AS's sister owned the remaining 1%. On 17 December 2004, the taxpayer's ultimate holding company underwent a restructuring exercise pursuant to a family arrangement under which AS became the sole ultimate beneficial owner of the taxpayer. The restructuring brought about a substantial change in the shareholders of the taxpayer. The taxpayer's application for a waiver was turned down by the Comptroller. The result was that the taxpayer's unabsorbed losses for the years ended 31 December 1996 to 1999 were not allowed to be carried forward to set off its income for YA 2005. The taxpayer appealed against the assessment for YA 2005.

The Board of Review ruled in the taxpayer's favour. The Board held that, on the facts, the Comptroller had not properly exercised his discretion in not granting the waiver. The Comptroller focused on the ground that there was no commercial basis or reason for the substantial change in shareholders and in effect elevated that ground to the status of a general rule which was then applied rigidly and inflexibly. Mere suspicions in the absence of any objective evidence that the family arrangement and restructuring were tax-motivated are not enough.

Tax consequences of a waiver

Where a waiver has been granted, the company can deduct:

(i) Unabsorbed capital allowances and/or losses only against the gains or profits derived from the same trade or business in respect of which the allowances or losses arose (s 23(6) and 37(17)(a)). This is to prevent companies from shifting profitable activities to loss-making concerns taken over for the primary purpose of avoiding tax.

(ii) Unabsorbed donations only against the statutory income for that YA (s 37(17)(b)).

¶9-500 Group relief

Singapore adopts the loss transfer system of group relief. It took effect from YA 2003 and is regulated by s 37C. Subject to certain rules, a member company of a group (a transferor company) is allowed to transfer the following qualifying deductions (also known as "loss items" in the IRAS e-Tax Guide) to another member company (a claimant company) within the same group (s 37C(14)):

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- current year unabsorbed capital allowances
- current year unabsorbed business losses, and
- current year unabsorbed donations.

Group relief does not apply to unabsorbed capital allowances, losses or donations from prior YAs. These unabsorbed balances are available for carry-forward by the transferor company subject to the "shareholders' continuity" test (and, in the case of unabsorbed capital allowances, the "business continuity" test as well). Unabsorbed donations can only be carried forward, for up to five years to set off against future years' statutory income.

To qualify for group relief for any YA, both the transferor company and the claimant company must:

(i) be Singapore-incorporated companies

(ii) have the same accounting year-end. Special rules apply if a company first changes its accounting year-end in order to be in line with the other company's accounting year-end

(iii) maintain shareholding level of at least 75% on the last day of the basis period for that YA

Where the 75% shareholding level is maintained on the last day of the basis period but not throughout the basis period, only the amount of loss items that is attributable to the **continuous period** ending on the last day of the basis period can be transferred.

Where the 75% shareholding level is maintained throughout the basis period, there is no such restriction to the amount of loss items that can be transferred, and

(iv) make a written election to transfer/claim the loss items at the time they submit their income tax returns. The election is irrevocable except under the circumstances provided in s 37C(13) (s 37C(2)).

Members of the same group

Two Singapore-incorporated companies are regarded as members of the same group (s 37C(3)) if:

- at least 75% of the total number of issued ordinary shares in one company is beneficially held, directly or indirectly, by the other, or
- at least 75% of the total number of issued ordinary shares in each of the two companies is beneficially held, directly or indirectly, by a third Singapore company.

"Ordinary share" is defined to mean any share other than a treasury share or a share which carries only a right to any dividend which is of:

- a fixed amount
- a fixed rate per cent of the value of the shares, or
- a fixed rate per cent of the profits of the company (s 37C(19)).

In addition to the "75% shareholding" test above, there is a second-level test to ensure that the holders of the issued ordinary shares are beneficially entitled, directly or indirectly, to the residual profits and residual assets of the company in proportion to their equity interest (s 37C(4)). In other words, the Singapore-incorporated company must also be beneficially entitled to at least 75% of:

(a) any residual profits of the other Singapore-incorporated company available for distribution to that company's equity holders, and

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(b) any residual assets of the other Singapore-incorporated company available for distribution to that company's equity holders on a winding-up.

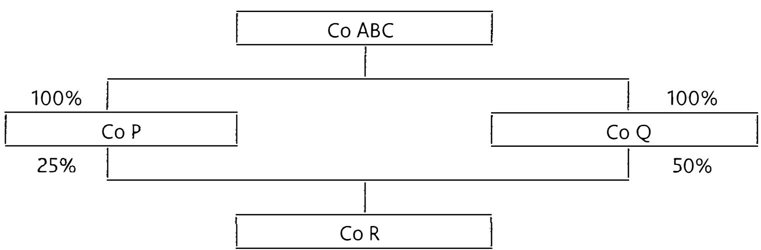
The following companies do not qualify as members of the same group for group relief purposes:

- foreign-incorporated companies
- two Singapore-incorporated companies where a foreign-incorporated company is interposed between them, and
- two Singapore sister-incorporated companies with a foreign parent company.

Additionally, any direct or indirect shareholdings by an entity that is not a Singapore-incorporated company (eg a trade association) will not be considered.

Example 5

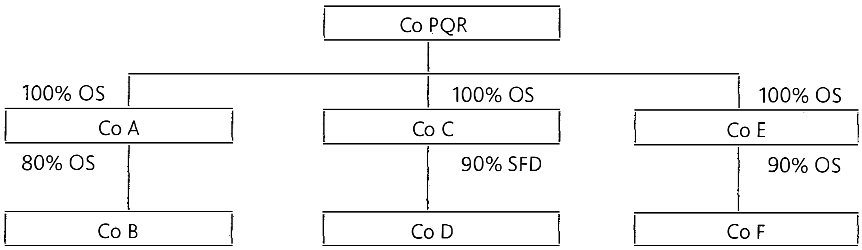
The diagram shows Company ABC and its group of companies and their shareholdings of the ordinary shares. All companies are incorporated in Singapore:



Members of same group	*Explanation*
Co ABC and Co P	Satisfied the direct shareholding of 75% ordinary shares
Co ABC and Co Q	Satisfied the direct shareholding of 75% ordinary shares
Co ABC and Co R	Satisfied the indirect shareholding of 75% ordinary shares
Co P and Co Q	Satisfied the direct shareholding of 75% ordinary shares held by Co ABC
Co P and Co R	Satisfied the direct and indirect shareholding of 75% ordinary shares held by Co ABC (Co ABC owns 100% of Co P and 75% of Co R)
Co Q and Co R	Satisfied the direct and indirect shareholding of 75% ordinary shares held by Co ABC (Co ABC owns 100% of Co Q and 75% of Co R)

Example 6

The diagram shows Company PQR and its group of companies and their shareholdings. All companies except for Company E are incorporated in Singapore:



OS — Ordinary shares

SFD — Shares that carry a right to only fixed dividends

Members of same group	*Explanation*
Co PQR and Co A	Satisfied the direct shareholding of at least 75% ordinary shares
Co PQR and Co C	Satisfied the direct shareholding of at least 75% ordinary shares
Co A and Co B	Satisfied the direct shareholding of at least 75% ordinary shares
Co A and Co C	Satisfied the direct shareholding of at least 75% ordinary shares held by Co PQR
Co PQR and Co B	Satisfied the indirect shareholding of at least 75% ordinary shares
Co C and Co B	Satisfied the direct (Co C) and indirect (Co B) shareholding of at least 75% ordinary shares held by Co PQR

Company D will not be considered a member of the same group as Co C's 90% shares in Co D (being shares that carry only a right to fixed dividends) are not ordinary shares.

Company E is not a member as it is a foreign-incorporated company.

Company F is also not a member of the same group. Although Company PQR owns 90% indirect shareholding in Company F (a Singapore-incorporated company), such shareholding will not be considered as Company E is a foreign-incorporated company.

Transfer of loss items

The loss items are to be transferred in the following order (s 37C(7) and (14)):

- current year capital allowances
- current year business losses, and
- current year donations.

A transferor company can transfer the full amount of its loss items to the extent that the amount can be absorbed by the claimant company's assessable income. The loss items have to be set off fully against the assessable income of the first claimant company before any excess loss items can be transferred to another claimant company.

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In a situation where the loss items are transferred to more than one claimant company, the transferor company must specify the order of priority of claims on the prescribed form. Once specified, the order of priority cannot be revoked.

Where the loss items cannot be fully claimed by the claimant companies, the balance will be retained as the transferor company's unabsorbed loss items available for carry-back or carry-forward relief, subject to the usual tests (s 23(1), 23(3), 37(5), 37(8) and 37E). (For details on carry-back, see ¶9-700 below.)

Claim of loss items by claimant company

The loss items are to be claimed according to the priority specified in the election made and in the following order (s 37C(7)):

- current year capital allowances
- current year business losses, and
- current year donations.

A claimant company can claim loss items from more than one transferor company. It has to specify the order of priority of the transferor companies on the prescribed form. Once specified, the order of priority cannot be revoked.

The loss items are deducted from the claimant's assessable income after deducting investment allowances, if any.

Loss items that are not transferable

Items that do not qualify for transfer under group relief include:

- s 14Q special deductions for R&R costs (up to YA 2012) (see Example 7 below)
- losses of foreign branches
- investment allowances
- capital allowances and losses prohibited from set-off against income from other activities under the existing laws for:
  - investment holding companies under s 10E (see exception given below)
  - finance leases under s 10D, and
  - businesses of hiring out motor cars or providing driving instructions under s 10H.
- loss items arising from an activity or trade, the income of which is wholly exempt from tax under the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act") or the EEIA (eg loss from pioneer trade)
- loss items allowable to an "eligible investor" of a start-up company under the "Enterprise Investment Incentive" (s 97V, EEIA), and
- loss items relating to any income the tax on which has been remitted under s 92(2) of the Act, unless the Minister for Finance (the "Minister") otherwise approves (the Minister has the discretion to remit, wholly or in part, the tax payable if it is just and equitable) (from YA 2007) (s 37C(15)(d)).

Chapter

From YA 2007, an investment holding company under s 10E can elect to transfer only its current year unabsorbed industrial building allowances (s 37C(15)(a)) to its member companies. Any unabsorbed capital allowances for plant and machinery remain not eligible for transfer to member companies.

From YA 2013, unutilised s 14Q deductions are allowed to be transferred under the group relief regime (s 37C(15)). Such transfer was not allowed prior to YA 2013. Example 7 shows the tax treatment of unutilised s 14Q deductions for YA 2012.

Example 7

A company has adjusted loss (before s 14Q deduction) of $10,000 for YA 2012. It qualifies for s 14Q deduction of $15,000 for that YA. Its other sources of income for YA 2012 included trade income of $2,000 and rental income of $1,000.

The tax computation for YA 2012 will be as follows:

	$	$
Trade 1 — Adjusted loss		
(before s 14Q deduction)	(10,000)	
Less: s 14Q deduction	(15,000)	(25,000)
Trade 2 — Adjusted profit (after capital allowances (CAs))		2,000
Rental income		1,000
Net trade loss		(22,000)
Amount available for transfer under group relief		
(10,000 – 2,000 – 1,000)		(7,000)
Amount of unutilised s 14Q deductions carried forward		(15,000)

(Source: Adapted from IRAS e-Tax Guide "Tax Deduction for Expenses Incurred on Renovation or Refurbishment Works Done to Your Business Premises", revised on 6 June 2013.)

Companies not eligible for group relief

The following companies that have been granted incentives under the EEIA are not eligible for group relief (s 37C(15)(b)) (see Chapter 19 at ¶19-100ff). The first four of these incentives have been repealed:

- approved technology company
- approved venture company
- approved technology investment company
- approved overseas investment company
- technopreneur start-up company.

Note that under the incentives granted, eligible investors are already allowed to deduct any loss arising from the sale of the qualifying shares held in specified companies.

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Adjustment for different tax rates

Where the tax rates of the transferor and the claimant companies are different, s 37B will apply to adjust the amount of loss items to be transferred or claimed taking into account the difference in the tax rates (s 37C(17)).

The group relief system is complex. See IRAS e-Tax Guide "Group Relief System", published on 6 September 2011, replacing "Loss Transfer System of Group Relief", published on 23 October 2002.

¶9-600 Transfer of qualifying deductions between spouses

From YA 2005, married couples are assessed separately. To ensure that they are not disadvantaged by the change in the assessment mode, they are allowed to transfer any excess of the following qualifying deductions between them for any YA (from YA 2005) if there is any remaining qualifying deduction that cannot be completely set off against the income of the respective spouse for that YA (s 37D):

- unabsorbed capital allowances
- unabsorbed business losses, and
- unabsorbed donations.

The qualifying deductions must first be set off against the assessable income of the spouse whose activities give rise to the deductions. Any excess is then available for transfer in the following order — capital allowances, business losses, followed by donations. The claimant spouse must have assessable income before a transfer can be allowed. The amount of qualifying deduction to be transferred is restricted to the amount of assessable income of the claimant spouse (s 37D(4)).

Both spouses must make an annual election to effect the transfer of qualifying deductions between them. The election must be made before the end of 30 days from the date of service of the notice of assessment on the individual or the spouse, whichever is the later. The election is not to be made at the time of submission of the tax returns. The election once made cannot be revoked, unless the Comptroller allows it (s 37D(5) and (6)).

With effect from YA 2016, the rules allowing the transfer of unabsorbed capital allowances, unabsorbed business losses and unabsorbed donations for set off against a spouse's assessable income for the same YA will no longer apply (see also ¶9-100, ¶9-200 and ¶9-300).

¶9-700 Carry-back scheme

A one-year carry-back scheme was announced during the 2005 Budget to provide financial assistance to small businesses that may run into cash flow problems. The one-year carry-back applies for YA 2006 to YA 2008 and from YA 2011. The scheme was temporarily enhanced for YA 2009 and YA 2010 (see below).

All businesses, including sole proprietors and partners, are allowed to carry back their:

(i) current year unabsorbed capital allowances, and

(ii) current year unabsorbed business losses

for set-off against the assessable income of the immediate preceding YA.

This means that unabsorbed capital allowances granted for YA 2015 and business losses incurred during the accounting year ending in 2014 can be carried back for set-off against assessable income for YA 2014.

Carry-back is not available for unabsorbed donations.

As a condition for carry-back, the taxpayer must have been assessed to tax and have paid tax for the immediate preceding YA. The carry-back helps businesses with their cash flow position by resulting in a tax repayable to them (see Example 8). The carry-back relief is given on due claim. It is not available to an investment holding company under s 10E.

Conditions for carry-back

The carry-back of qualifying deductions is subject to the following conditions:

- For carry-back of unabsorbed capital allowances (but not unabsorbed loss) — the person must carry on the same business in the basis period for the immediate preceding YA (ie he must satisfy the "business continuity" test) (s 37E(11)).
- For taxpayers who are companies, they must also satisfy the "shareholders' continuity" test for carry-back: there must be no substantial change in the shareholders and their shareholdings as at the relevant dates (s 37E(12), (13)).

  For the carry-back of unabsorbed capital allowances, the relevant dates are:

  (i) the first day of the YA in which the capital allowances arose, and

  (ii) the last day of the YA in which the capital allowances are utilised.

  For the carry-back of unabsorbed business losses, the relevant dates are:

  (i) the first day of the year in which the loss was incurred, and

  (ii) the last day of the YA in which the loss is utilised.

  Examples 8 and 9 illustrate the application of the above rules.

- For YAs 2006 to 2008 and from YA 2011, the amount of qualifying deductions to be carried back is restricted to the lower of:

  (i) the actual amount of the qualifying deductions, or

  (ii) the assessable income of the immediate preceding YA, or

  (iii) $100,000 (s 37E(3), (5)).

  Assuming a corporate tax rate of 17%, this means that the maximum amount of tax refund a company can possibly claim under the carry-back scheme is $100,000 × 17%, ie $17,000.

- The carry-back relief is given on due claim. An election once made is irrevocable. The election has to be made within the following time frame (s 37E(6)):

  (i) For companies, bodies of persons, trustees and executors — not later than the time of lodgment of its return of income for the current YA.

  (ii) For individuals — not later than 30 days from the date of service of the notice of assessment for the current YA.

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- The **order of set-off for carry-back** against the assessable income of the immediate preceding YA is as follows:
  (i) current year unabsorbed capital allowances, if any, and then
  (ii) current year unabsorbed business losses, if any.
- In the case of a company that qualifies as a transferor company for the current YA and for carry-back to the immediate preceding YA, the carry-back relief is effected after the transfer under group relief. The amount of current year unabsorbed capital allowances and unabsorbed business losses eligible for carry-back is the net amount after deducting any qualifying deductions transferred under group relief.
- In the case of an individual, the carry-back relief is similarly effected after taking into account any qualifying deductions transferred to the individual's spouse for the same YA under s 37D (see ¶9-600 and ¶12-100). The remaining qualifying deductions can then be carried back for set-off against the individual's assessable income of the immediate preceding YA. If the individual's assessable income is less than the qualifying deductions, the individual and his spouse can elect to transfer the excess amount of qualifying deductions for set-off against his spouse's assessable income for the immediate preceding YA.

From YA 2016, the rules allowing the carry-back of unabsorbed capital allowances and/or unabsorbed business losses for set off against a spouse's assessable income for the immediate preceding YA will no longer apply (see also ¶9-100 and ¶9-200).

From YA 2007, the carry-back relief does not apply where the eligible deductions relate to any income on which tax has been remitted, unless (s 37E(18)(b)):

(i) no such remission of tax would be given to any income in the following YA, or

(ii) the remission is to effect a deduction for any outgoing or expense that is not otherwise deductible under s 14.

Example 8: One-year carry-back of capital allowances and losses of YA 2015 to YA 2014

Company M, a manufacturer of hard disks, makes up its accounts each year to 30 June. For YA 2015 (ie accounting year ended 30 June 2014), it has:

(i) unabsorbed capital allowances of $150,000, and

(ii) unabsorbed business loss of $225,000.

Assume that the corporate tax rate of 17% continues to apply for YA 2015.

The notice of original assessment for YA 2014 showed the following:

	$
Chargeable income before exempt amount	402,500
Less: Exempt amount	(152,500)
Chargeable income after exempt amount	250,000
Tax assessed @ 17%	42,500
Less 30% tax rebate	(12,750)
Net tax payable	29,750

Chapter 9

There has been no change in Company M's shareholders and their shareholdings until 1 October 2014 when shareholders Y and Z sold all their shares to shareholders A and B respectively. The shareholders and their shareholdings are as follows:

Shareholdings as at	*Shareholders (1,000 shares each, all fully paid)*
1 January 2014	X:Y:Z
31 December 2014 and 1 January 2015	X:A:B

Solution

Unabsorbed capital allowances can be carried back to YA 2014, as there has been no change to the company's business of manufacturing.

In order to carry back the unabsorbed capital allowances and losses, the same shareholders at the following relevant dates must hold at least 50% of the total number of issued shares.

For the carry-back of capital allowances:

- 1 January 2015 (first day of the YA in which the capital allowances arose, ie YA 2015)
- 31 December 2014 (last day of the YA in which the capital allowances are utilised, ie YA 2014)

For the carry-back of losses:

- 1 January 2014 (first day of the year in which the loss was incurred (ie the loss was incurred in the year 2014)
- 31 December 2014 (last day of the YA in which the loss is utilised, ie YA 2014)

The unabsorbed capital allowances (restricted to $100,000) can be carried back to YA 2014.

The remaining capital allowance of $50,000 and the loss of $225,000 can be carried forward to YA 2016 for set-off against future income, subject to the usual tests.

If the amount of capital allowances to be carried back had been less than $100,000, the business loss cannot be carried back as the shareholders' test is not satisfied. This is because the only common shareholder X as at both relevant dates (1 January 2014 and 31 December 2014) held 33.33% (ie less than 50%) of the shares on each of those dates.

Revised tax computation for YA 2014 (basis period: 1 July 2012–30 June 2013):

	$
Chargeable income before exempt amount	402,500
Less: Carry-back of YA 2015 capital allowances	(100,000)
	302,500
Less: Exempt amount	(152,500)
Chargeable income after exempt amount	150,000
Tax assessed @ 17%	25,500
Less 30% rebate	(7,650)
	17,850
Less: Tax previously payable	(29,750)
Tax repayable	(11,900)

Note: From YA 2013 to YA 2015, companies qualify for a 30% tax rebate capped at $30,000 for each YA.

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For examples showing the application of the carry-back scheme for individuals and companies, including those with income subject to tax at different rates, see IRAS e-Tax Guide "Carry-back Relief Scheme", published on 9 July 2012 and revised on 26 May 2014.

Historical note

Enhanced carry-back relief scheme for YAs 2009 and 2010

To help businesses tide over the global financial crisis then prevailing, the 2009 Budget introduced an enhanced carry-back scheme. The enhanced scheme applied for YAs 2009 and 2010 only:

- the limit on the total amount of current year qualifying deductions that could be carried back was increased to $200,000 from $100,000
- the current year qualifying deductions for YAs 2009 and 2010 could be carried back for up to three YAs immediately preceding that YA in which the capital allowances were granted or the business losses were incurred (s 37E(1A))
- the order of set-off of qualifying deductions to the immediate three YAs was as follows: first to the third YA, followed by the second YA and last to the YA immediately preceding the YA in which the capital allowances were granted or the business losses were incurred (s 37E(1B)). The order of set-off was therefore as follows:

YA 2009 — (i) YA 2006; (ii) YA 2007; (iii) YA 2008
YA 2010 — (i) YA 2007; (ii) YA 2008; (iii) YA 2009

Example 9 illustrates the application of the enhanced carry-back relief.

(For examples on the enhanced carry-back relief for YAs 2009 and 2010 and the procedures to make an election for that relief, see IRAS e-Tax Guide "Enhanced Carry-back Relief System" (Revised Ed), published on 23 January 2009 and last revised on 30 July 2009.)

Example 9: Carry-back of YA 2009 capital allowances and losses under the enhanced carry-back scheme

Chapter

Company A makes up its accounts each year to 30 June. For YA 2009 (ie accounting year ended 30 June 2008), it has unabsorbed capital allowance of $150,000 and business loss of $225,000.

Under the enhanced carry-back scheme, the unabsorbed capital allowances and business losses up to maximum of $200,000 can be carried back for set-off against the chargeable income of YA 2006, followed by YA 2007 and, lastly, YA 2008, provided the relevant conditions are satisfied.

Assume the notices of assessment for YAs 2006, 2007 and 2008 showed the following:

YA		YA 2006	YA 2007	YA 2008
		$	$	$
Chargeable income before exempt amount		102,500	145,000	320,000
Less:	Exempt amount			
	75% of $10,000	(7,500)	(7,500)	(7,500)
	50% of $90,000	(45,000)	(45,000)	
	50% of $290,000			(145,000)
Chargeable income after exempt amount		50,000	92,500	167,500
Tax rate		20%	20%	18%
Tax @ 20%		10,000	18,500	
Tax @ 18%				30,150

As long as Company A satisfies:

(i) the "business continuity" test, and

(ii) the "shareholders' continuity" test,

the YA 2009 unabsorbed capital allowances (restricted to $102,500) can be carried back to YA 2006. The remaining balance of $47,500 can be carried back to YA 2007.

Similarly, the YA 2009 unabsorbed business loss (restricted to $50,000) can be carried back to YA 2007. As the overall carry-back limit of $200,000 has been reached, none of the remaining business loss of $175,000 can be carried back to YA 2008.

YA 2009	Unabsorbed capital allowances	Unabsorbed business loss	Amount carried back
	$	$	$
Balance before carry-back	150,000	225,000	
Carried back to YA 2006	(102,500)	0	(102,500)
Carried back to YA 2007	(47,500)	(50,000)	(97,500)
Balance after carry-back	0	175,000	

To satisfy the shareholders' continuity test for the carry-back of the unabsorbed capital allowances and loss, the same shareholders at the following dates must hold at least 50% of the total number of issued shares.

For the carry-back of YA 2009 unabsorbed capital allowances of $102,500 to YA 2006:

- 1 January 2009 (first day of the year in which the capital allowances arose, ie YA 2009)
- 31 December 2006 (last day of the YA in which the capital allowances are utilised, ie YA 2006)

For the carry-back of YA 2009 unabsorbed capital allowances of $47,500 to YA 2007:

- 1 January 2009 (first day of the year in which the capital allowances arose, ie YA 2009)

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- 31 December 2007 (last day of the YA in which the capital allowances are utilised, ie YA 2007)

For the carry-back of YA 2009 unabsorbed loss of $50,000 to YA 2007:

- 1 January 2008 (first day of the year in which the loss was incurred (ie year 2008))
- 31 December 2007 (last day of the YA in which the loss is utilised, ie YA 2007)

The remaining unabsorbed business loss of $175,000 can be carried forward for set-off against the statutory income of YA 2010 subject to the shareholders' continuity test.

The revised tax computations for YAs 2006 and 2007 would be as follows:

	YA 2006 $	YA 2007 $
Chargeable income	102,500	145,000
Less: Carry-back of YA 2009 capital allowances	(102,500)	(47,500)
Less: Carry-back of YA 2009 business loss		(50,000)
Chargeable income before exempt amount	0	47,500
Less: Exempt amount		
75% of $10,000		(7,500)
50% of $37,500		(18,750)
Chargeable income after exempt amount	0	21,250
Tax @ 20%	0	4,250
Less: Tax previously assessed	(10,000)	(18,500)
Tax repayable	(10,000)	(14,250)

¶9-800 Adjustment of capital allowances, losses and/or donations for income subject to different rates of tax

In any YA, a company may have income that is taxable at a lower tax rate (for the purpose of the following paragraphs, to be known as "LTR income") and income that is taxable at a higher tax rate ("HTR income"). The highest tax rate in Singapore for a company is 17% (with effect from YA 2010). Certain types of income may be subject to a lower tax rate (eg 5% or 10%), as prescribed under the Act.

Chapter

Under s 37B, where a company has unabsorbed capital allowances, losses and/or donations in respect of a trade or business that is taxed at one rate, an adjustment factor will be applied to determine the amount of capital allowances, losses and/or donations to be set off against income taxed at a lower rate. The adjustment factor is the ratio that the higher tax rate and lower tax rate bear to each other, ie:

$$\frac{A}{B}$$

where

A is the higher tax rate for that YA, and

B is the lower tax rate for that YA.

The adjustment factor removes any tax benefit arising from the different tax rates being applied. If not for the adjustment factor, a loss of $100 will result in a tax reduction of $10 when it is set off against income taxed at 10%, but $17 when it is set off against income taxed at 17%.

Deduction of unabsorbed capital allowances, losses and donations relating to LTR income

Where a company's unabsorbed capital allowances, losses and/or donations which relate to LTR income do not exceed its chargeable HTR income multiplied by the adjustment factor, the chargeable HTR income is reduced by an amount arrived at by dividing those unabsorbed capital allowances, losses and/or donations by the adjustment factor. The amount of unabsorbed allowances, losses and/or donations is reduced to nil (s 37B(2)(a)) (see Example 10).

Example 10

ABC Company's LTR income and HTR income (before capital allowances) are $1,000 and $2,200 respectively. The company is entitled to capital allowances of $1,700, out of which $1,500 relates to the LTR income and $200 to the HTR income. ABC Company has losses of $500 brought forward from previous years and these losses related to the LTR income.

Assume:

(i) the shareholders' continuity test is satisfied

(ii) LTR = 10%, and

(iii) HTR = 17%.

The company's chargeable income is computed as follows:

	LTR income (10%) $	***HTR income (17%)*** $
Profit before capital allowances	1,000	2,200
Less: Capital allowances	(1,000)	(200)
Chargeable income	Nil	
		2,000
Unabsorbed capital allowances	500	
Less: Set-off of unabsorbed capital allowances	(500)	(294)*
	Nil	
Losses b/f	500	
Less: Set-off of losses b/f	(500)	(294)*
Chargeable income before exempt amount	Nil	1,412

* Adjustment = 500 ÷ 17/10 = $294

Where a company's unabsorbed capital allowances, losses and/or donations which relate to LTR income exceed its chargeable HTR income multiplied by the adjustment factor, the unabsorbed allowances, losses and/or donations are reduced by an amount arrived at by multiplying that chargeable HTR income by the adjustment factor. Any balance is available for carry-forward. The company's chargeable HTR income is reduced to nil (s 37B(2)(b)) (see Example 11).

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Example 11

Assume the facts are the same as in Example 10 except that ABC Company's HTR income before capital allowances is $300.

	LTR income (10%) $	*HTR income (17%)* $
Profit before capital allowances	1,000	300
Less: Capital allowances	(1,000)	(200)
Chargeable income	Nil	
Adjusted profit		100
Unabsorbed capital allowances	500	
Less: Set-off of unabsorbed capital allowances	(170)*	(100)
Unabsorbed capital allowances c/f	330	
Losses b/f and c/f	500	
Chargeable income		Nil

* Adjustment = 100 × 17/10 = 170

If the HTR profit before capital allowances was $592, the company's tax position would be as follows:

Profit before capital allowances	1,000	592
Less: Capital allowances	(1,000)	(200)
Chargeable income	Nil	
Adjusted profit		392
Unabsorbed capital allowances	500	
Less: Set-off of unabsorbed capital allowances	(500)	(294)*
	Nil	
Statutory income		98
Losses b/f	500	
Less: Set-off of losses b/f	(167)**	(98)
Losses b/f	333	
Chargeable income		Nil

* Adjustment = 500 ÷ 17/10 = 294

** Adjustment = 98 × 17/10 = 167

Chapter 9

Deduction of unabsorbed capital allowances, losses and/or donations relating to HTR income

Where a company's unabsorbed capital allowances, losses and/or donations which relate to HTR income <u>do not exceed</u> its chargeable LTR income divided by the adjustment factor, the LTR income is reduced by an amount arrived at <u>by multiplying</u> the unabsorbed capital allowances, losses and/or donations by the adjustment factor. The amount of unabsorbed capital allowances, losses and/or donations is reduced to nil (s 37B(3)(a)) (see Example 12).

Example 12

XYZ Company has HTR and LTR income before capital allowances of $1,000 and $2,200 respectively. The company is entitled to capital allowances of $1,700, out of which $1,500 is attributable to the HTR business and $200 to the LTR business. The company's chargeable income is computed as follows:

	HTR income (17%) $	LTR income (10%) $
Profit before capital allowances	1,000	2,200
Less: Capital allowances	(1,000)	(200)
Chargeable income	Nil	
		2,000
Unabsorbed capital allowances	500	
Less: Set-off of unabsorbed capital allowances	(500)	(850)*
Chargeable income	Nil	1,150

* Adjustment = 500 × 17/10 = 850

Where a company's unabsorbed capital allowances, losses and/or donations which relate to HTR income exceed its chargeable LTR income divided by the adjustment factor, the LTR income is reduced by an amount arrived at by dividing the unabsorbed allowances, losses and/or donations by the adjustment factor. Any unabsorbed balance will be available for carry-forward. The chargeable LTR income is reduced to nil (s 37B(3)(b)) (see Example 13).

Example 13

Assume the facts are the same as in Example 12 except that XYZ Company's LTR income is only $300.

	HTR income (17%) $	LTR income (10%) $
Profit before capital allowances	1,000	300
Less: Capital allowances	(1,000)	(200)
Chargeable income	Nil	
		100
Unabsorbed capital allowances	500	
Less: Set-off of unabsorbed allowances	(59)	(100)*
Unabsorbed capital allowances c/f	441	
Chargeable income		Nil

* Adjustment = 100 ÷ 17/10 = 59

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The *Income Tax Amendment Act 2012* has clarified the tax treatment with regard to deductible corporate donations made in the following situations:

(1) If a company derives only exempt income for YA 2013 or a subsequent YA, any sum allowable as a deduction in respect of the donation will be treated as unabsorbed donation in respect of income that is taxable at the normal corporate tax rate. This is for the purpose of determining the amount of deduction of such unabsorbed donations in a subsequent YA for which the company derives income that is subject to tax at a concessionary tax rate or rates (s 37B(6A)).

(2) It is possible for donations made during a basis period that is related to YA 2012 or an earlier YA not to have been deducted against the amount of income which is to be tax exempt under the law applicable to those YAs. This situation may occur if, for example, a taxpayer made a "tax-exempt" loss and the donation has to be carried forward under that law to a subsequent YA.

It is now legislated that the company may offset such unabsorbed donation against its other taxable income for YA 2013 and subsequent YAs. In general terms, for YA 2013, the deduction will be allowed on a "dollar-for-dollar" basis, without the need to apply the s 37B adjustment factor. From YA 2014, however, the deduction of the balance of the unabsorbed donation will be subject to the s 37B adjustment, where applicable (s 37M).

The following illustration is taken from the Income Tax (Amendment) Bill 2012.

Suppose a company has a $100 unabsorbed donation that has yet to be deducted from income exempt from tax and is carried forward from YA 2012 to YA 2013. In YA 2013, the company derives only normal income of $30 and in YA 2014, the company derives normal income of $50 and concessionary income (subject to tax at 10%) of $50. The unabsorbed donation of $100 will be deducted as follows:

YA 2013	Normal tax rate	Concessionary tax rate (10%)	Remarks
Income	$30	–	
Unabsorbed donations brought forward	($100)	–	s 37M(2)(b)
Unabsorbed donations carried forward	$70		
YA 2014			
Income	$50	$50	
Unabsorbed donations brought forward	($70)		s 37M(1)(v)
	$20	$50	
Horizontal set-off	($20)	($34)	s 37B adjustment
Chargeable income	$0	$16	

It has been further clarified that the donation to be given the tax treatment set out in s 37M above is the amount of the donation that remains after determining the amount of exempt income for YA 2012 (s 37M(1)(b)).

Chapter

¶9-950 Sample corporate tax computation

YA 2015

Financial year ended 31 December 2014

	$	$
Profits per accounts		3,568,000
Less: Tax adjustments		
Separate sources of income credited to P&L account		
Interest income	15,000	
Singapore dividends	11,500	
Credit items in P&L account that are not taxable		
Profit on sale of fixed assets	70,000	
Foreign exchange gain on capital transactions	2,000	
Deductible expenses not charged to P&L account		
Renovation and refurbishment (R&R) costs capitalised in the balance sheet but qualifying for s 14Q **special deduction**	52,000	
Further deduction *for approved trade fair expenses (s 14B)*	20,000	
The trade fair expense of $20,000 charged to the P/L account qualifies for s 14(1) deduction		
300% ***enhanced deduction*** *for approved training expense (s 14R) (300% × $30,000)*	90,000	
The training expense of $30,000 charged to the P/L account qualifies for s 14(1) deduction		
		260,500
		3,307,500
Add: Non-deductible items charged to P&L account		
Depreciation	147,000	
Structural alterations to factory building	64,000	
General expenses (eg fines)	3,500	
S-plate car running expenses (eg petrol, ERP charges)	8,000	
Donations	40,000	
Provision for staff retirement	60,000	
Loss on sale of long-term investment	47,500	
		370,000
		3,677,500
Add: Balancing charges		17,500
Adjusted profit		3,695,000
Less: Capital allowances:		
Unabsorbed capital allowances for YA 2013 b/f (Note 1)	40,000	
Unabsorbed capital allowances for YA 2014 b/f (Note 1)	36,000	
Current year capital allowances:		
Industrial building allowances: Annual allowance	45,000	

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	$	$
Plant and Machinery:		
Initial and annual allowances (s 19)	57,000	
Accelerated allowances (s 19A)	29,000	
Balancing allowances	18,000	225,000
Tax-adjusted s 10(1)(a) income (after capital allowances)		3,470,000
Add: Non-s 10(1)(a) income:		
Interest income		15,000
Statutory income		3,485,000
Less: Unabsorbed losses for year ended 31 December 2012 c/f (Note 2)		26,500
Unabsorbed losses for year ended 31 December 2013 c/f (Note 2)		30,000
		3,428,500
Less: 250% × Donations of $40,000 to approved institutions ($40,000 × 2.5)		100,000
Assessable income/Chargeable income before exempt amount		3,328,500
Less: Exempt amount (s 43(6) maximum)		152,500
Chargeable income after exempt amount		3,176,000
Tax assessed @ 17%		539,920
Less 30% tax rebate (capped at $30,000)		(30,000)
Net tax payable		509,920

From YA 2013 to YA 2015, companies qualify for a 30% tax rebate capped at $30,000 for each YA.

(For information only: It was announced in the 2015 Budget announcement that companies will qualify for a 30% tax rebate subject to the smaller cap of $20,000 for YA 2016 and YA 2017. Moreover, approved donations made in the year 2015 will qualify for 300% deduction for YA 2016.)

Note:

(1) Assume that:

(i) there is no substantial change in the company's shareholders and their shareholdings at the relevant dates, namely:

- 31 December 2013 and 1 January 2015, and
- 31 December 2014 and 1 January 2015.

(ii) the "business continuity" test is satisfied for the carry-forward of these unabsorbed capital allowances.

Note that the order of set-off is on a FIFO basis.

(2) Assume that these unabsorbed business losses satisfy the "shareholders' continuity" test on the relevant dates, namely:

- 31 December 2012 and 1 January 2015, and
- 31 December 2013 and 1 January 2015.

Note that the order of set-off is on a FIFO basis.

CHAPTER 10

DIVIDENDS

¶10-100 Introduction

This chapter discusses the tax treatment of dividend income in Singapore.

A dividend is a distribution by a company to its shareholders in money or money's worth, representing a share of its profits. It is income and not a return of capital. Where a dividend has been paid in kind, the market value of the asset at the date of distribution is taken to be the value of the dividend received by the shareholders. In general terms, Singapore-incorporated companies can pay dividends to their shareholders only out of distributable profits (s 403(1) of the *Companies Act (Cap 50)*).

Under company law, a liquidator of a company cannot pay a dividend. The responsibilities of a company liquidator are to realise the company's assets, pay off the creditors and distribute any remaining assets among the shareholders. Any surplus assets that are distributed to the shareholders would constitute a capital receipt to them.

A bonus issue is a capitalisation of a company's reserves and merely a reallocation within the shareholders' funds. Each shareholder's percentage holding in the company immediately before and after the bonus issue remains the same. In Singapore, a bonus issue does not, therefore, constitute dividend income.

The payments made by a Singapore resident company under some circumstances, eg a reduction of share capital, certain payments under a share buyback scheme, share redemption or a buyback of shares of a preferential nature, are deemed to be dividends paid to shareholders for tax purposes (s 10I, 10J, 10K and 10M (repealed)) (see ¶10-600). As Singapore has moved to the one-tier corporate tax system from 1 January 2008, these provisions which were relevant under the former full imputation system are no longer relevant. They have therefore been repealed by the *Income Tax (Amendment) Act 2014*.

¶10-200 Source of dividends

The *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act") does not explicitly set out the source rule for dividends.

In principle, a dividend accrues to the shareholder (ie a dividend becomes payable) only upon the declaration of that dividend by the company's board of directors. Such a declaration of dividend is an exercise of the control and management of the company's business by the board. Where the company is resident in Singapore, that exercise by definition (s 2(1)) takes place in Singapore, and the source of the dividend is therefore in Singapore.

Conversely, a non-resident company pays only a foreign dividend. Under the second limb of s 10(1), unless an exemption applies, a foreign dividend is subject to tax in Singapore only if it is received in Singapore.

In any case, the source of the profits out of which a dividend is paid is not relevant to the question whether the dividend is a Singapore dividend or a foreign dividend.

¶10-300 Accrual and basis of assessment

Dividend income accrues on the date an enforceable obligation to pay is created by the company that declares the dividend. A distinction should be made between an interim dividend and a final dividend:

(i) In the case of an interim dividend that the board of directors has resolved to pay, the board may at any time before the stipulated date of payment review its decision and resolve not to pay the dividend. An interim dividend therefore accrues to the shareholder only on the stipulated date of payment.

(ii) Where a final dividend is declared and a date of payment stipulated, the dividend accrues on that stipulated date.

(iii) Where a final dividend is declared but the date of payment is not stipulated, the dividend accrues on the date of declaration. In this case, the declaration of the dividend creates a debt that is immediately enforceable.

Dividends that are business receipts fall under s 10(1)(a); dividends that are passive investment income fall under s 10(1)(d). It is a question of fact whether dividends constitute income under s 10(1)(a) or 10(1)(d). For a share-dealing company, dividends would be a s 10(1)(a) source; for a manufacturing company or retailer, dividends constitute a s 10(1)(d) source. For companies and businesses, the basis of assessment is the preceding accounting year basis regardless of whether the dividends are s 10(1)(a) or 10(1)(d) income (see also ¶10-400 below).

¶10-400 Types of dividends

Dividends paid by a Singapore resident company (whether incorporated in or outside Singapore) are Singapore dividends.

On the other hand, dividends paid by a company not resident in Singapore (even if it is incorporated and doing business in Singapore) are foreign dividends.

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Singapore dividends

From 1 January 2008, all Singapore resident companies come under the one-tier system and may pay out only Singapore exempt one-tier dividends. These dividends are exempt in the hands of the shareholders (s 13(1)(za)).

Historical note

Up to 31 December 2002, Singapore adopted the full imputation system of corporate taxation. The one-tier system came into effect on 1 January 2003, but there was a five-year transitional period up to 31 December 2007 during which a Singapore resident company was allowed to pay a franked dividend, if some conditions were satisfied. The full imputation and one-tier systems co-existed during that transitional period (For the detailed transitional rules, please refer to the previous editions of this book).

Under full imputation, the Singapore tax paid by a Singapore resident company on its profits was passed on as a tax credit to its shareholder upon the distribution of the company's profits as franked dividends. When a shareholder received the net franked dividends (ie gross dividends after deducting an amount known as "tax deducted at source"), he was taxable on those dividends on a gross-up basis. However, the corporate tax that had been paid on the profit to which the dividends related was "imputed" to the shareholder. This means that the shareholder could claim credit for the tax deducted at source (also known as imputation tax credit) in calculating his own tax payable. In this manner, full imputation avoids the economic double taxation of dividends found in the classical two-tier system of corporate taxation. Under the classical system, a company is taxed on its profits and a shareholder is taxed again, without any relief, on the dividends paid (see ¶10-700).

Under full imputation, a Singapore resident company was able to alternatively pay out a normal exempt dividend (besides a franked dividend). A normal exempt dividend could be paid out of the company's income that qualified, for example, for tax exemption or concessionary tax rates. A normal exempt dividend was exempt in the hands of the recipient shareholder.

The move to the one-tier system had some adverse tax implications for companies that relied on borrowings to fund their equity investments in Singapore subsidiaries and affiliates. As all Singapore dividends are exempt under the one-tier system, any interest costs attributable to these dividends no longer qualified for deduction for tax purposes (see Chapter 7 at ¶7-100ff). This translated into higher tax costs for the group of companies. The Inland Revenue Authority of Singapore (IRAS) recognised this consequence of Singapore's move to the one-tier system and had granted the following concessions subject to conditions:

(i) concession for holding companies that had difficulties restructuring their investments
(ii) concession for companies that restructured their equity investment to debt or debt instruments, and
(iii) concession for companies undergoing merger or 100% acquisition.

(See IRAS e-Tax Guide "One-Tier Corporate Tax System", Supplementary Circular, published on 27 June 2003.)

Foreign dividends

Unless an exemption in Singapore applies, foreign dividends are subject to tax in Singapore only if they are received in Singapore. Subject to conditions, exemption applies, for example, to foreign dividends received in Singapore by:

(i) a Singapore resident company (s 13(8); see ¶14-330), and

(ii) a Singapore resident individual (s 13(7A); see ¶6-950).

Foreign dividends derived from any investment made under the Central Provident Fund (CPF) Investment Schemes are exempt. The exemption is granted regardless of whether the investments are made through CPF approved unit trusts or the members' personal fund management accounts (s 13(1)(j); IRAS e-Tax Guide "Tax Exemption for CPF Investment Scheme", published on 31 August 1998).

Hybrid instruments treated as equity instruments

A hybrid instrument (HI) is a financial instrument that exhibits both equity and debt features. The IRAS has published its position on whether a HI is to be treated as an equity instrument or a debt instrument (see ¶6-255; IRAS e-tax Guide "Income Tax Treatment of Hybrid Instruments", published on 19 May 2014).

Where a HI is treated as an equity instrument, the payments made by the issuer to the investor are regarded as dividends for tax purposes. If the issuer is a Singapore resident company, the dividend will consequently be regarded as a one-tier exempt dividend and it is tax-exempt to the investor. If the issuer is a non-resident company, the dividend will be a foreign dividend and therefore taxable to the investor only if it is received in Singapore unless an exemption applies (see Chapter 14).

¶10-500 Group treatment for dividends

The following paragraphs apply to Singapore dividends (taxable up to YA 2008) and to taxable foreign dividends.

If dividends are taxable under s 10(1)(d), any excess of expenses over the dividend income for any block of shares cannot, in principle, be set off against the dividend income from another block of shares.

In *HHCL v CIT* (2005) MSTC 5,391, the taxpayer's principal activity for YAs 1985 to 1996 (under dispute) consisted of investing in shares, with substantial long-term investments in various subsidiaries and associated companies. A main issue was whether certain expenses incurred were deductible against the dividend income. The Board of Review held that the word "source" in s 14(1) means a channel or stream of income and that the dividends from each of the distinct share counters constituted a distinct source of income for the purposes of deductibility. The Board's decision was upheld on appeal (*JD Limited v CIT* (2006) MSTC 7,463; *JD Limited v CIT* (2006) MSTC 7,504; [2005] SGCA 52).

As a long-standing concession, however, the IRAS has applied a group treatment for calculating the total amount of dividends that is subject to tax (see IRAS e-Tax Guide "Concessionary 'Group' Treatment for Dividend Income Assessable to Tax under Section 10(1)(d) of the Singapore Income Tax Act", first published on 22 January 1996 and updated on 28 March 2005) (see ¶7-410 and ¶7-720).

¶10-600 Historical Note: Reduction of share capital, share buyback, share redemption and buyback of shares of a preferential nature

The old s 10I, 10J, 10K and 10M set out respectively the tax treatment of payments made by a Singapore resident company to its shareholders under:

(i) a reduction of share capital

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(ii) a share buyback

(iii) a share redemption, and

(iv) a buyback of shares of a preferential nature.

As these provisions are no longer relevant under Singapore's one-tier system, they have been repealed by the *Income Tax (Amendment) Act 2014*. **¶10-600 is retained for information only.**

Reduction of share capital

Where a Singapore resident company reduces its share capital by making payments out of its contributed capital to its shareholders, such payments do not constitute dividends paid by the company but are a return of capital (s 10I(2) (repealed)). However, if the reduction of share capital is not made out of the company's contributed capital, such payments are deemed to be dividends paid by the company to its shareholders on the date of payment (s 10I(3) (repealed)).

The "share capital" of a company is defined to include any reserve, which is treated as the company's paid-up capital for purposes of any share capital reduction (s 10I(5)(a) (repealed)). The company's "contributed capital" is defined as the total of:

- cash or any other valuable consideration received by the company for the shares it had issued to date, and
- after deducting any payments made to any shareholder by the company under any scheme involving a reduction of share capital, a redemption of shares or a return of share capital where such payments had not been treated as a payment of dividends for tax purposes (s 10I(5)(b) (repealed)).

Any amount applied by a company in issuing shares of the company to its shareholders as bonus shares is not regarded by the company as receipts from the issue of shares (s 10I(5)(h) (repealed)). There are rules for the maintaining of the contributed capital account.

Share buyback

Following an amendment to the company law in 1998, it became possible for a Singapore incorporated company to buy back its own ordinary shares under some circumstances. A share buyback may either be made on a stock exchange ("on-market purchase") or otherwise ("off-market purchase").

An off-market purchase may be made under:

(i) an equal access scheme, or

(ii) a selective arrangement.

Under the off-market purchase on equal access scheme, the company has to, among other conditions, make a general offer to all shareholders to buy back the same percentage of its shares (s 10J(12)(c) (repealed)).

Chapter

A selective off-market arrangement is available only to unlisted companies.

The above tax treatment relating to share buybacks applies to a Singapore resident company that buys or otherwise acquires its own shares from its shareholders, whether to hold as treasury shares or otherwise. "Treasury shares" has the same meaning as in s 4(1) of the *Companies Act*.

(i) Tax treatment of on-market share buybacks through special trading counters (STC)

For shareholders who sell their shares to a company in an on-market share buyback exercised through an STC set up on the Singapore Exchange (SGX), the tax treatment is as follows:

(a) The amount received by shareholders from such share buybacks will be treated as a receipt of dividends only if, among other conditions:

  (i) the shares sold through the STC are not acquired by the shareholder through any securities lending or repurchase arrangement, and

  (ii) the shareholders have beneficially owned the shares for a continuous period of at least 183 days immediately before the sale (s 10J(5) (repealed)).

  In determining the duration of beneficial ownership, the day of acquisition of the shares is counted as one day, but the day of sale of the shares is excluded. Further, any bonus shares or shares arising from a consolidation or sub-division of shares are deemed to have been acquired on the date of acquisition of the original shares in respect of which the bonus shares were issued, or from which the consolidated or sub-divided shares were derived. The duration will not be regarded as discontinued by the lending or sale of the shares under any securities lending or repurchase arrangement (the old s 10J(12)(d) (repealed)).

(b) Where the amount received from such share buybacks qualifies to be treated as a receipt of dividends (STC dividends):

  (i) any tax credit associated with the STC dividends (this was possible only under the former full imputation system), which is in excess of the tax payable by the shareholders concerned, will be disregarded (s 46(5) and 46(6))

  (ii) no deduction is allowed to the shareholder for the costs incurred to acquire the shares that have been sold, and

  (iii) where any provision for the diminution in the value of such shares has been allowed as a deduction previously, the total amount of all such deductions not written back is deemed to be a trading receipt of the shareholder for the basis period in which the shares are sold (the old s 10J(11) (repealed)).

In other words, shareholders can use the tax credit associated with STC dividends to set off their tax liabilities. Any amount of such credit that is in excess of the amount of tax payable will, however, be disregarded. The excess is not refundable to the shareholders nor can it be carried forward to set off against the shareholders' future tax liabilities. Where the shareholders also receive other Singapore dividends, the tax credits from these dividends will be used to set off the tax payable by the shareholders first, followed by the tax credits from the STC dividends (see Example 1).

Companies that buy back their shares through an STC are required to only issue dividend vouchers to those shareholders for shares which have been held for at least 183 days. They should also indicate on the vouchers that the dividend is in respect of payment under a share buyback conducted through an STC. Shareholders who have held the shares for at least 183 days will have to submit to the company concerned a declaration to the effect. The IRAS also requires companies to provide in an electronic

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medium, details of the STC dividends paid so that they can be automatically included in the tax assessment of the shareholders (IRAS Press Statement, 28 February 2000).

(Note: Following the abolition of the imputation system, the provisions of s 10J(4) to (9), (11) and (12)(d) were deleted by *Income Tax (Amendment) Act 2013*.)

Example 1

Tax computation for YA 2006

Assume that the taxpayer is an individual resident in Singapore.

	$	$
Employment income		30,000
Singapore dividends		
STC	5,000	
Others	1,000	6,000
Assessable income		36,000
Less: Personal reliefs (for example)		10,000
Chargeable income		26,000
Tax on 1st $20,000	Nil	
Tax on next $6,000 @ 3.75%	225	225
Tax liability		225
Less: Tax deducted at source (TDS)		
Other Singapore dividends	200	
STC dividends	1,000	1,200
		975.00
Less: Refund attributable to TDS from STC dividends		1,000.00
Amount of tax refund		NIL (see text)

(ii) On-market purchase or selective off-market purchase

Where the buyback arrangement is an on-market purchase or a selective off-market purchase, the payment is not regarded as dividend in the hands of the shareholders although it may be regarded as a dividend payment by the company. The amount received by the shareholder is regarded as proceeds from the sale of shares. The profits arising from the sale will be taxable only if, for example, the shareholder is a share trader. This treatment applies whether or not the company is regarded as having paid a dividend.

(iii) Off-market purchase under equal access scheme

Where the buyback is an off-market purchase under an equal access scheme and the payment is not made out of the company's contributed capital, the shareholder is deemed to have received dividend income.

For purposes of s 10J (repealed), "shares" include stocks but exclude shares or stocks of a preferential nature. "Contributed capital" has the same meaning as that for the reduction of share capital (see above). However, the shareholder is not allowed to deduct the cost of shares against his dividend income. Further, the cost of the shares sold under such a share buyback scheme is added to the cost of the remaining shares to determine the average cost of the shareholder's remaining shares after the buyback (s 10J(10) (repealed)).

Where the payment is made out of exempt income, the payment deemed to be dividend will be exempt.

Share redemption

Where a Singapore resident company redeems from its shareholders any redeemable shares issued after 6 July 1999 and the redemption payment is not made out of contributed capital, the payment is deemed to be a dividend paid by the company on the date of payment (s 10K (repealed)). The amount received by the shareholders is not regarded as dividend in their hands.

"Contributed capital" has the same meaning as that for reduction of share capital.

Buyback of shares of a preferential nature

The provisions on share redemption apply similarly in relation to any purchase or acquisition by a Singapore resident company from its shareholders of shares or stocks of a preferential nature issued by it (s 10M (repealed)).

¶10-700 Systems of corporate taxation

There are many systems of corporate taxation in the world. This section compares the tax treatment of dividends received under:

(a) the full imputation system

(b) the one-tier system, and

(c) the classical two-tier system (under which corporate profits are subject to tax at two levels — once at the corporate level and again, as dividends, at the shareholder's level).

Assume that Company A:

(i) is wholly owned by one shareholder, and

(ii) it distributes all its after-tax profits.

The corporate tax rate is 30%.

The shareholder's marginal tax rate is 20%.

Company's position:

	$
Profit for the year	100,000
Less: Tax at 30%	(30,000)
Distributed to shareholder	70,000

(a) Shareholder's position under the full imputation system:

	$
Gross dividend income	100,000
Tax at 20%	20,000
Less: Tax deducted at source	(30,000)
Tax refund	10,000

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Under full imputation, the tax borne by the company is available to frank dividends. Here, the company declares gross franked dividend of $100,000. This amount includes a franking credit of $30,000, which can be claimed by the shareholder. The shareholder in fact receives $70,000 in cash for the dividend ("net franked dividend"), but reports as taxable income the dividend on a gross-up basis ($100,000).

As the shareholder can claim credit for the tax paid by the company, the effective tax rate on the corporate profits is reduced to 20% as the total tax payable is reduced to $20,000 (ie corporate tax of $30,000 paid by Company A, less shareholder's tax refund of $10,000). The tax paid by the company is fully imputed to the shareholder who receives the franked dividend.

Where corporate profits are fully paid out as franked dividends, the impact of the full imputation system is that each shareholder is effectively taxed on the corporate profits at his own marginal tax rate (20% in the example). Consequently, the corporate tax under a full imputation system is not a final tax.

(b) Shareholder's position under the one-tier system:

Exempt dividend income	$70,000

Under the one-tier system, the company declares exempt dividend of $70,000 and that dividend is not taxable in the hands of the shareholder. Like under the full imputation system above, the shareholder receives only $70,000 in cash for the dividend.

The effective tax rate on the corporate profits remains at 30% regardless of the shareholder's marginal tax rate. The tax paid by the company is the final tax.

(c) Shareholder's position under the classical system:

Dividend income	$70,000
Tax at 20%	$14,000

Under the classical system, the company declares dividend of $70,000 and that dividend is taxable in the hands of the shareholder. Here, because the shareholder is assumed to suffer a 20% dividend withholding tax, he receives only $56,000 (after dividend withholding tax) in cash for the dividend. In common tax parlance:

(i) the amount of $70,000 is referred to as "gross dividend", and

(ii) the amount of $56,000 is referred to as "net dividend".

The tax ($30,000) paid by the company on the profit ($100,000) out of which the dividend is paid is called the underlying tax; it is not imputed to the shareholder. As the shareholder is subject to 20% tax on the dividend income, the effective tax rate on the corporate profits is 44% as the total tax payable is $44,000 (ie $30,000 at Company A's level + $14,000 at shareholder's level).

CHAPTER 11

PARTNERSHIPS

NATURE

¶11-100 Nature

The following paragraphs refer to partnerships other than limited liability partnerships (LLPs), which are discussed in ¶11-400.

A partnership, unlike a company, is not a person in law and is not assessed as a separate entity for tax purposes (*Rose v FC of T* (1951) 84 CLR 118). Partners in a partnership are therefore assessed separately on their respective shares of income from the partnership.

The term "partnership" connotes a relationship between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all. A partnership need not be confined to individuals. A joint venture between two companies or between a company and an individual may be classified as a partnership. Mere joint ownership of a property such as a house does not of itself constitute a partnership. An association of persons would not constitute a partnership unless they carry on a business in common with a view to profit.

The partners forming a partnership are collectively referred to as a "firm". The partnership carries on business under the firm's name, which must be registered with the Accounting and Corporate Regulatory Authority (ACRA).

¶11-110 Existence, partnership agreement and changes

Existence

Whether a partnership exists is partly a question of law, but more so, a question of fact. Some of the more important points to be considered are:

- whether there is a partnership agreement
- whether the partnership is registered with the ACRA and the appropriate professional body (eg the Law Society of Singapore, etc), where applicable
- what is the basis of sharing profits and losses (eg the sharing of losses is a strong indication that a partnership exists)
- whether the partnership has a bank account; what are the methods of operating the account; who is authorised to operate it and whether there are any limitations on the issuing of cheques
- what names are shown on the business stationery, in trade directories, in the register of the ACRA, in the register of the relevant professional body where applicable, etc, and
- whether the business is carried on by all partners or some partners acting for the other partners.

Partnership agreement and commencement date

A mere formal agreement is not conclusive that a partnership exists (*Dickenson v Gross* (1927) 11 TC 614). A partnership can function without a written agreement and, for tax purposes, such an arrangement is acceptable. However, various problems can arise where there is no written agreement. For example, disputes may arise on the death of a partner.

A *de facto* partnership may exist even if the partnership agreement does not contain any provisions for contributions of capital by some of the partners and only a few of the partners actively participate in the affairs of the business (*Re A* (1953) FB XII). Where there is evidence that a *de facto* partnership had existed before an agreement was executed, and the agreement was made in recognition of that fact, the partnership is treated as having commenced on the earlier date.

Where a partnership has actually commenced from the date of execution of a partnership agreement or deed, it cannot be deemed to have commenced earlier, even if the agreement or deed provides for retrospective operation.

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Change in partnership

For income tax purposes, where a change takes place in a partnership due to the retirement or death of one or more of the partners, or the admission of a new partner, the old partnership is deemed to have ended on the date that the change takes place.

If the remaining partners continue to carry on the trade or profession of the partnership, there is technically a "dissolution" of the old partnership with the creation of a new partnership which takes on the assets and liabilities of the old partnership without any break in the continuity of the business (per *Thean* J in *Chiam Heng Chow & Anor v Mitre Hotel & Ors* (1995) 2 MSTC 7,269). When a new partnership comes into existence under such circumstances, the continuing partners are deemed to have commenced a new source of income.

¶11-120 Types of partners

For tax purposes, it is important to differentiate between the various categories of partners:

(a) *Full partner* — A full or "actual" partner conducts the business of the partnership and shares in the profits or losses generated. Full partners are assessed under s 10(1)(a), ie income from a business or professional source.

(b) *Salaried partner* — Although held out to be a partner, a salaried partner is in fact merely an employee of the partnership drawing a fixed salary with or without commissions or bonuses. Salaried partners do not share in the losses of the partnership, have no title to the goodwill and normally do not have the right to direct the partnership. They are assessed to tax under s 10(1)(b), ie on income from an employment source. In some cases, however, salaried partners are assessed under s 10(1)(a) as carrying on a business. For example, sharebrokers who are salaried partners in a broking firm do not draw salaries but derive commissions on the business they help to generate for the firm. For tax purposes, the admission or exit of salaried partners does not result in a change in the partnership.

From the year of assessment (YA) 2004, the Inland Revenue Authority of Singapore (IRAS) has standardised the tax treatment for salaried partners. All salaried partners will be assessed under s 10(1)(b) on their income as salaried partners and they can claim personal reliefs for their CPF contributions up to the prescribed limits (see ¶12-265) allowed under s 39(2)(g).

This standardisation of tax treatment for salaried partners was spelt out in the IRAS' letter of 9 December 2003 to the Institute of Certified Public Accountants of Singapore (ICPAS), now known as the Institute of Singapore Chartered Accountants (ISCA).

Subsequent to this letter, the IRAS has clarified that they will treat a salaried partner as a self-employed person and assess his earnings as business income under s 10(1)(a) if the salaried partner is regarded as serving under a contract for service as determined by the precedent partner of the firm.

(c) *Precedent partner* — The precedent partner is the partner who, among all the partners present in Singapore, is the first named in the partnership agreement. If there is no partnership agreement, the precedent partner is a partner who is agreed upon and appointed by the other partners of the partnership.

(d) *Sleeping partner* — A sleeping partner only contributes capital to the business and does not have anything to do with the conduct of the business. Sleeping partners are assessed under s 10(1)(a) but do not qualify for earned income relief under s 39(1)(b).

(e) *Corporate partner* — This refers to a company that has entered into a partnership with other companies or individuals.

(f) *Co-owner and partner* — A co-owner of a property is not necessarily a partner. However, where co-owners employ property with a view to profit and to share any profit among themselves, such co-ownership may be deemed to be a partnership.

(g) *Non-resident partner* — A non-resident person can be a partner in a partnership carrying on a trade or profession in Singapore. The income of the non-resident partner is assessable in the name of the partnership or of any resident partner or of an agent of the partnership in Singapore. The tax charged on the income of a non-resident partner may be recovered by the IRAS out of the assets of the partnership or from any partner or from the partnership's agent (s 53(8)).

(h) *Minor as partner* — A minor may be a partner but cannot be held personally liable for any obligations of the firm until the minor comes of age. Where a minor becomes a partner under a settlement within the meaning of the provisions of s 31, the minor's share of the partnership income would, for tax purposes, be deemed to be that of the settlor (s 31(1)).

It is important to note that any individual who merely shares in the income of a partnership is not necessarily a partner with the persons carrying on the business of the partnership. For example, employees of a partnership may be remunerated with a share in the business profits but such an arrangement is not sufficient to establish that the employee is in partnership with the persons carrying on the business. If a widow of a deceased partner receives a share of the business profits as an annuity, this does not in itself make her a partner in the business. The receipt of payments which vary with the profits earned by a business, or which is contingent upon the business earning profits, does not of itself make the recipient a partner with the persons carrying on the business.

BASIS OF ASSESSMENT

¶11-200 Basis of assessment

No tax assessment can be made on a partnership as it is not a person in law. The law provides that each partner is to be assessed separately in respect of his share of the partnership income (s 36(1)). Each partner must include his share of the partnership income in his tax return. Consequently, there is a need to compute the profits of the partnership for tax purposes in order to ascertain the share of each individual partner.

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From YA 2005, all foreign-sourced income received in Singapore by resident individuals will be exempted from tax (see ¶14-330). This exemption will not apply if the foreign-sourced income was received through a partnership in Singapore. However, certain foreign-sourced income received by resident individuals through a partnership may be exempted from tax if the conditions specified in s 13(8) are satisfied (see Chapter 14 at ¶14-100ff).

From 1 April 2008, the following deductions, writing-down allowances (WDA), exemptions and concessionary tax rates also apply to a partnership (s 36(1A) and 36(1B)):

- further deduction for expenditure on research and development (R&D) under s 14E
- WDA for intellectual property (IP) rights under s 19B
- WDA for approved cost-sharing agreements for R&D activities under s 19C
- exemption of income of venture companies under s 13H
- exemption of income of shipping investment companies under s 13S
- concessionary rate of tax for leasing of aircraft and aircraft engines under s 43Y, and
- concessionary rate of tax for container investment enterprises under s 43ZA.

¶11-210 Partnership tax computation

Determination of partnership's divisible and adjusted profits

The income of a partnership for any period is computed in the same way and on the same basis as that of a person carrying on a trade or business. Adjustments are further made for the partners' salaries, interest on capital and other personal expenses charged in the partnership accounts. Such appropriations are not allowable for tax purposes.

A partnership cannot own fixed assets since it is not a legal person. The assets belong jointly to the individual partners. Each year's capital allowances (CA) are allocated to the partners in accordance with the profit-sharing ratio.

		$	$
Net profit/(loss) per accounts			xxxx
Less: Income from other sources			xxxx
			xxxx
Add: Non-deductible expenses			xxxx
Divisible profit/(loss) (Note 1)			xxxx
Add: Partners'	– salaries and bonuses	xxxx	
	– interest on capital	xxxx	
	– personal expenses (Note 2)	xxxx	xxxx
Adjusted profit/(loss)			xxxx

Notes:

(1) This is the amount of net profit/(loss) which has to be allocated to the partners in accordance with the partnership profit-sharing ratio.

(2) A partnership agreement may provide that certain personal expenses (eg life assurance premium and leave passages) of partners are to be paid and borne by the firm. In such instance, for the partner concerned, his personal expenses borne by the firm will be regarded as his additional income from the partnership.

Allocation to respective partners

The partnership's divisible profit/(loss) is allocated among the partners who are then assessed in their own names as individuals. Partners' salaries, bonuses and interest on capital, if any, will be allocated to the respective partners.

CA and donations to approved institutions are allocated to each partner in accordance with the partnership profit-sharing ratio.

Where the partnership derives income from non-trade source, such income will also be apportioned among the partners in accordance with the partnership profit-sharing ratio.

	Mr A $	*Mr B* $	*Total* $
Salary and bonuses	xxxx	xxxx	xxxx
Interest on capital	xxxx	xxxx	xxxx
Personal expenses	xxxx	xxxx	xxxx
Divisible profit/(loss)	xxxx	xxxx	xxxx
Adjusted profit/(loss) (Note 1)	xxxx	xxxx	xxxx
Income from other sources (Note 2)	xxxx	xxxx	xxxx
CA (Note 3)	xxxx	xxxx	xxxx
Donations allowable under s 37(3)(b)–37(3)(f) (Note 4)	xxxx	xxxx	xxxx

Notes:

(1) The partner's share of the current year's CA is set off against firstly, his share of the partnership's business income and any remaining balance against his other income (s 35(2A)). Where there are unabsorbed CA for a current YA, the partner has the option to transfer the unabsorbed CA to his spouse, to carry back the unabsorbed CA up to a specified amount for set-off against his own assessable income and/or his spouse's assessable income for the immediate preceding YA or to carry forward the unabsorbed CA to the next YA provided the assets are still used in the same trade (s 23(1) and 35(2)). Unless transitional concession applies to unabsorbed CA incurred in and before YA 2015, unabsorbed CA will not be allowed to be transferred to a spouse with effect from YA 2016. Refer to ¶9-100 for more details.

(2) For an adjusted loss, a partner deducts his share of the adjusted loss against his statutory income (s 37(3)(a)). Where the current year's loss cannot be fully absorbed, the unutilised loss can be transferred to the partner's spouse, carried back to the immediate preceding YA or be carried forward indefinitely until relieved. Unless transitional concession applies to unabsorbed business loss incurred in and before YA 2015, unabsorbed business loss will not be allowed to be transferred to a spouse with effect from YA 2016. Refer to ¶9-200 for a detailed discussion.

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(3) Where the partner is a company, the shareholders' continuity test has to be satisfied before the unabsorbed CA and/or business losses can be carried back to the immediate preceding YA or be relieved in future years (s 23(4) and 37(12)) (see ¶9-400).

(4) Donations are allowed against the partner's statutory income after the deduction of losses. Any unabsorbed donations for the current YA can be transferred to the partner's spouse for that YA or be carried forward for set-off for the next five YAs (s 37(7) and 37(8)). Note that the current year's unabsorbed donations cannot be carried back. Note also that unless transitional concession applies to unabsorbed donations incurred in and before YA 2015, unabsorbed donations will not be allowed to be transferred to a spouse with effect from YA 2016. Where the partner is a company, the shareholders' continuity test under s 37(12) has to be satisfied before any unabsorbed donations brought forward can be utilised. Refer to ¶7-900 and ¶9-300 for more details.

Example 1

Low and Lee are partners in a firm that reported a net loss of $25,000 for the financial year ended 31 December 2014. The only disallowable items, for income tax purposes, charged in the accounts are depreciation of $1,700 and donations of $1,300. The partnership agreement provides that Low and Lee are to be paid an annual salary of $3,600 each and interest on capital amounting to $2,000 for Low and $400 for Lee. The CA are $2,400 and cash donations made to approved institutions are $1,000. The two partners share profits equally.

<u>Partnership tax computation for YA 2015</u>

	$
Net loss per accounts	(25,000)
Add: Depreciation and donations	3,000
Divisible loss	(22,000)
Add: Partners' salaries and interest	9,600
Adjusted loss	(12,400)

The partners' share of loss from the partnership is:

	Low	***Lee***	***Total***
	$	**$**	**$**
Salary	3,600	3,600	7,200
Interest	2,000	400	2,400
Divisible loss	(11,000)	(11,000)	(22,000)
Adjusted loss	(5,400)	(7,000)	(12,400)
CA (Note 1)	1,200	1,200	2,400
Donations (Note 2)	1,250	1,250	2,500

Notes:

Assuming both Low and Lee do not have any other source of income:

(1) the respective partners' CA (subject to the business continuity test) and adjusted losses will be carried forward for set-off against income of subsequent years (s 35(2) and 37(3)(a) respectively), and

(2) for YA 2015, the amount of deduction for donations made to approved institutions in the year 2014 is 2.5 times the amount or value of qualifying donations (s 37(3)(c)). As the partners do not have any taxable income, the donations can be carried forward for up to five YAs (s 37(8)).

Change in partnership

Where a change occurs (eg due to the retirement or death of one or more of the partners, or the admission of a new partner) during the basis period for any YA, both the old and the new partnership have to file separate tax returns to report the total income derived during the basis year. The tax return of the old partnership will include the income from the first day of the accounting year to the date of change. Accounts are usually drawn up for the period to the date of change. The new partnership's tax return will include the income from the date of change to the end of the accounting year. The new partnership may, if it wishes, adopt a different accounting year from that of the old partnership. The partners of both partnerships may also wish to make a s 24 election with regard to claims for CA (refer to ¶8-270).

Example 2

Goh, Chew and Tan started business after 1 January 1969 and the partnership makes up its accounts to 31 December each year. During 2014, Goh retired on 31 March 2014 and Lim joined as a partner from 1 April 2014. The relevant basis periods for the "old" and "new" partnerships for YA 2015 are as follows:

YA 2015	*Basis period*
"old" partnership	1 January 2014–31 March 2014
"new" partnership	1 April 2014–31 December 2014

Example 3

Ang and Beng are in partnership since 1997, sharing profits in the ratio 5:3 respectively. The firm, AB Enterprise, closes its accounts annually on 31 March.

On 1 December 2014, Chye is admitted to the partnership which is renamed ABC Enterprise. The profits will be shared by Ang, Beng and Chye in the ratio 5:3:2 respectively. The new firm will continue to close its accounts annually on 31 March.

The partnership's only fixed asset is a van that cost $45,000 in December 2013, and s 19 CA have been claimed. The partners have agreed to make a s 24 election.

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CA computation (s 24 election made)

AB Enterprise	**$**
YA 2015 (Basis period: 1 April 2013–31 March 2014)	
Cost of van (December 2013)	45,000
Less: s 19 allowances—	
Initial allowance (20% of $45,000)	(9,000)
Annual allowance (80% of $45,000/6)	(6,000)
Written-down value as at 31 March 2014	30,000
YA 2015 (Basis period: 1 April 2014–30 November 2014)	
Written-down value b/f	30,000
Less: Written-down value transferred to ABC Enterprise in view of s 24 election	(30,000)
Balance	Nil

Note: AB Enterprise is not entitled to claim any CA as a s 24 election has been made.

ABC Enterprise	**$**
YA 2016 (Basis period: 1 December 2014–31 March 2015)	
Written-down value transferred from AB Enterprise	30,000
Less: Annual allowance (80% of $45,000/6)	(6,000)
Written-down value as at 31 March 2015	24,000

The annual allowance of $6,000 will be allocated based on the new partnership's profit-sharing ratio as follows:

	$
Ang	3,000
Beng	1,800
Chye	1,200

¶11-220 Partners' tax computation

Example 4

A, B and C are partners in a dental practice and they share profits and losses equally. The partnership's computation of adjusted profits and the allocation among partners for the year to 31 December 2014 are as follows:

Partnership income tax computation for YA 2015

		$	$
Profit per accounts			174,637
Add:	Depreciation	11,450	
	Professional fees — reorganisation	4,320	
	Redecoration — alterations	7,350	
	Cash donations (approved)	4,000	27,120
			201,757

Less: Replacements capitalised			1,707
Divisible profits			200,050
Add: Partners	– Salaries	132,000	
	– Bonus	230,000	
	– Insurance (Note 3)	30,000	
	– Leave passages	13,050	
			405,050
Adjusted profits			605,100
CA			14,575
Cash donations allowable (Note 1)			10,000

Allocation of profits among partners

Name	Divisible profits Basis	Amount $	Salaries $	Bonus $	Insurance $	Leave passages $	Total for assessment $
Dr A	1/3	66,684	50,000	150,000	10,000	13,050	289,734
Dr B	1/3	66,683	50,000	50,000	10,000	—	176,683
Dr C	1/3	66,683	32,000	30,000	10,000	—	138,683
	100%	200,050	132,000	230,000	30,000	13,050	605,100

Deductions allowable to partners personally:

	CA $	Allowable donations $
Dr A	4,859	3,334
Dr B	4,858	3,333
Dr C	4,858	3,333
	14,575	10,000

Partner Dr A's income tax computation for YA 2015

	$	$
Partnership income as computed		289,734
Less: CA		4,859
Statutory income		284,875
Less: Allowable cash donations (Note 1)		3,334
Assessable income		281,541
Less: Personal reliefs		
Earned income (Note 2)	1,000	
Wife	2,000	
Child	4,000	
Insurance (Note 3)	4,000	11,000
Chargeable income		270,541

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Notes:

(1) 250% deduction for approved donations (s 37(3A)).

(2) Where gains or profits of the partnership are immediately derived from the carrying on of the partnership's business, an active partner is entitled to earned income relief on his share of the partnership income.

(3) Where the firm pays for the premiums on the partners' personal life insurance policy, the partners may claim their respective amounts as personal reliefs against their assessable income. In this example, we assume that the insurance premium of $10,000 paid by the partnership for each partner comprises life assurance premiums of $4,000 and medical insurance premiums of $6,000.

When preparing an individual partner's tax return (Form B)

Sole proprietors and partners whose trade, business or professional turnover is less than $500,000 need not submit a certified statement of accounts with their tax returns. Instead they are required to ascertain and indicate in their returns the following items: turnover, gross profit/(loss), allowable deductions, and adjusted profit/(loss).

Even though a certified statement of accounts need not be submitted, it should still be prepared and proper business transaction records kept as the IRAS may call for them.

PARTNERSHIP FILING AND OTHER OBLIGATIONS

¶11-310 Accounting records, Form P and estimated chargeable income

There is no statutory requirement for partnership accounts to be audited. However, the Comptroller of Income Tax (the "Comptroller") has to be satisfied that the books and records are properly maintained to enable the determination of the partnership income. The Comptroller has the power to prescribe the form of these records and the way they should be kept. He can also compel the production of audited accounts within a specified period of time (s 65).

The annual partnership return (Form P) must be completed and submitted by the precedent partner by 15 April each year (s 62(1) and 71(1)). If a partnership has chargeable income in a YA and has not received Form P within three months from the start of that YA, it must inform the Comptroller within 14 days after the end of the third month of that YA of its chargeability to tax (s 62(4)).

From YA 2009, the precedent partner or other person liable to file the partnership's return is required to furnish an estimate of the partnership's income within three months after the end of the accounting year of the partnership if the partnership's return for that YA has not yet been filed (s 71(3)).

Up to YA 2008, the partnership is not obliged to furnish an estimate of its income within three months after the end of the accounting year of the partnership unless it requests for an extension of time to file its return. The Comptroller may approve a reasonable request for an extension of time to file the partnership's return provided an estimate of the firm's profits is furnished.

¶11-320 Precedent partner

The responsibility of filing a partnership return falls on the precedent partner (s 71(1)). Among all partners present in Singapore, the precedent partner is the partner who:

- is first named in the partnership agreement
- if there is no agreement, is specified by name or initial singly or with precedence to the other partners in the usual name of the firm, or
- is the precedent acting partner if the person named with precedence is not an acting partner.

Where no partner is present in Singapore, the return should be made by the lawyer, agent, manager or factor of the firm in Singapore (s 71(2)).

A distribution statement is required to be completed in the partnership return. The names and addresses of the partners, salaries, interest on capital, bonuses, allowances, profit-sharing ratio and the amount of each partner's share must be shown. In addition, information is to be provided on whether the partner is a sleeping or an acting partner and whether the partner is below the age of 21 on 1 January of the basis year for that YA.

¶11-330 Partners leaving the partnership or Singapore

Where a partner who is likely to be chargeable to tax in Singapore ceases or is about to cease to be a partner, the partners present in Singapore must give one month's notice in writing to the Comptroller before the cessation (s 68(8)).

A similar notice is also required where a partner is leaving or intends to leave Singapore for a period exceeding three months and is likely to be chargeable to tax in Singapore (s 68(9)). Where, however, the nature of the business requires the partner to leave Singapore at frequent intervals, such notice is not necessary (s 68(10)).

In cases where there are reasonable grounds for not being able to give a month's notice, the Comptroller may accept a shorter notice.

Section 68(11) requires the partners present in Singapore not to release any money due to a partner who has ceased or is about to cease to be a partner in Singapore until such time as a written clearance is given by the Comptroller.

¶11-340 Partnership with non-resident partners

Sections 45 (on interest), 45A (on royalties, management fees, etc) and 45F (on professional fees) provide that a person has to withhold tax in respect of certain payments made to non-resident persons. This withholding tax requirement will also apply to such payments made by a person in Singapore to any non-resident partners through the Singapore partnership.

The compliance difficulties associated with the determination of the tax residency status of a partnership with non-resident partners were raised during a dialogue session between the ICPAS's Taxation and Levies Committee (the Taxation and Levies Committee is now under the purview of the Singapore Institute of Accredited Tax

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Professionals) and the IRAS in 2009. The IRAS has subsequently advised the ICPAS (now ISCA) for payments made to a partnership with non-resident partners if the following conditions are satisfied:

- The partnership has at least one resident partner.
- The partnership doing business in Singapore files a yearly return (Form P) and declares all its income, including those which are subject to withholding tax.
- In the case of a partnership where all its partners are non-resident, a letter of undertaking from the head office is submitted stating that the head office will be held liable for any outstanding tax arising from the waiver should there be a default of any tax payment by any non-resident partner arising from the waiver.

Where there is a change in the composition of the partnership to one that comprises only non-resident partners, the partnership has to notify the Comptroller immediately and furnish the required undertaking from its head office in order to continue to enjoy the waiver.

LIMITED LIABILITY PARTNERSHIPS

¶11-400 Limited liability partnerships

An LLP is essentially a partnership with limited liability. The LLP is a business structure that allows businesses the flexibility to operate and function as a partnership but with a legal personality separate from that of its partners. An LLP is a body corporate registered under the *Limited Liability Partnerships Act (Cap 163A, 2006 Revised Ed)* (the "LLP Act"). Foreign LLPs are LLPs that are incorporated or registered under any laws outside Singapore that are similar to the LLP Act.

The LLP Act came into force on 11 April 2005. The income tax treatment of LLPs is dealt with under s 36A of the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act") and clarified by the IRAS in the e-Tax Guide "Income Tax Treatment of Limited Liability Partnerships (LLPs)", updated on 1 March 2014. This e-Tax Guide (as at 29 June 2012) consolidates the following two e-Tax Guides: (1) "Income Tax Treatment of Limited Liability Partnerships (LLPs)", published on 15 July 2004; and (2) "Income Tax Treatment of Limited Liability Partnerships (LLPs) (Supplementary Circular)", published on 10 June 2005.

An LLP must have at least two partners. There is no upper limit as to the number of partners an LLP can have. The partner of an LLP can be an individual or a body corporate. An LLP has perpetual succession. Any change in the partners of an LLP (ie admission of new partner(s) into an LLP or withdrawal of partner(s) from an LLP due to retirement, death or other reasons) will not affect the existence, rights or liabilities of an LLP.

¶11-420 Income tax treatment of LLPs

For income tax purposes, an LLP carrying on a trade, business or profession (TBP) or vocation will be treated as a partnership and not a separate legal person (s 36A(1)). This means that the income of an LLP will be chargeable with tax in the hands of its partners and not in the hands of the LLP.

A corporate partner of an LLP will be taxed on its income derived from the LLP at the prevailing corporate tax rate of 17%. An individual as a partner of the LLP will be taxed on his income derived from an LLP at the prevailing personal tax rates.

Where a partner has assigned his economic interest to another person but continues to remain as a partner of the LLP, the partner will still be liable to tax on his share of income derived from the LLP income despite the assignment.

Similar to a normal partnership, the following that are derived from an LLP will be allocated to the partners according to the agreed profit-sharing ratio:

- CA arising from the TBP
- tax adjusted profits or losses arising from that TBP or vocation, and/or
- any approved donations.

Capital allowances

CA (including any balancing allowances arising from the disposal of fixed assets) are the allowances that an LLP could claim for the use of the following assets in the production of its income — plant and machinery, industrial building (on or before 22 February 2010), land intensification (after 22 February 2010), IP rights, cost-sharing agreement for R&D activities and Indefeasible Right of Use (IRU).

Like partners in a normal partnership, an LLP partner must first set off his share of LLP CA against his income derived from the LLP. Where there are any unabsorbed LLP CA due to insufficient LLP income, such allowances are available for set-off against the partner's other income for the same YA subject to certain restrictions as explained in subsequent paragraphs. Where there are still unabsorbed LLP CA, the following three options are available to the partner (see Chapter 9 at ¶9-100ff):

- to transfer any current year unabsorbed CA to his spouse (in the case of an individual partner) or to a claimant company (in the case of a corporate partner) for the same YA
- to carry back any current year unabsorbed CA for set-off against the partner's assessable income and/or his spouse's assessable income (in the case of an individual partner) for the immediate preceding YA, or
- to carry forward the unabsorbed CA to subsequent YAs subject to the business continuity test and, in the case of a corporate partner, the shareholders' continuity test.

Do note that unabsorbed CA cannot be transferred to a spouse from YA 2016. However, if transitional concession applies, unabsorbed CA incurred in and before YA 2015 may be transferred to a spouse until YA 2017 subject to existing rules.

Business losses

Similarly, a partner can set off his business losses from an LLP against his other income for the same YA subject to certain restrictions. Where there are still unabsorbed business losses, the three options mentioned in the earlier paragraph (including the restriction for transfer to a spouse) would also apply as to the utilisation of such losses.

However, for any YA, where the partner's share of CA and/or business losses (referred to in the Act as the "relevant deductions") exceeds his share of the LLP's taxable profits and the excess is set off against the partner's other incomes for that YA, the

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relevant deductions would be restricted as explained below. Any remaining CA and/or business losses can be carried forward to the following YA subject to the business continuity test and, in the case of a corporate partner, the shareholding test (see Chapter 9 at ¶9-100ff). These carried-forward CA and/or business losses must first be set off against the partner's share of income from the LLP. Any remaining balance can then be set off against other income of the partner subject to the relevant deduction restriction.

Relevant deduction restriction

The amount of relevant deductions which can be set off against the partner's income from other sources for any YA, together with all of his past relevant deductions allowed in all past YAs, cannot exceed the partner's contributed capital as at the end of the basis period relating to that YA.

The amount of past relevant deductions is the aggregate of any relevant deductions allowed to a partner less any amount deemed to be income (see below) chargeable with tax in any YA before the current YA.

For any YA, the amount of relevant deductions in respect of CA allowed to a partner is restricted to an amount determined as follows:

$$(A - B)$$

where	A	is the contributed capital in that YA, and
	B	is the past relevant deductions (ie CA and business losses) already allowed to the partner.

For any YA, the amount of relevant deductions in respect of business losses allowed to a partner is restricted to an amount determined as follows:

$$(A - B - C)$$

where	A	is the contributed capital in that YA
	B	is the past relevant deductions (ie CA and business losses) already allowed to the partner, and
	C	is the relevant deduction for CA allowed to the partner in that YA.

The application of the above rules is explained in Example 5.

Example 5: Illustration of set-off and restriction of CA, industrial building allowances (IBA) and trade loss of partners of an LLP

Mr Thomas and Ms Sharon are partners of an LLP whose principal business is the marketing of microchips. The LLP has a 31 December accounting year-end. The relevant details of the LLP for YA 2013, YA 2014 and YA 2015 are:

(See following table.)

	Mr Thomas (Example 1)			Ms Sharon (Example 2)		
(A) Profit-sharing ratio	60%			40%		
(B) Contributed capital as at:	31 December 2012	31 December 2013	31 December 2014	31 December 2012	31 December 2013	31 December 2014
	$50,000	$50,000	$60,000	$40,000	$30,000	$25,000
(C) LLP's Adjusted profit/loss for y/e:	Y/E 31 December 2012	Y/E 31 December 2013	Y/E 31 December 2014	Y/E 31 December 2012	Y/E 31 December 2013	Y/E 31 December 2014
(a) 31 December 2012 — Loss $9,000	($5,400)			($3,600)		
(b) 31 December 2013 — Loss $5,000		($3,000)			($2,000)	
(c) 31 December 2014 — Profit $30,000			$18,000			$12,000
(D) CA/IBA for:	YA 2013	YA 2014	YA 2015	YA 2013	YA 2014	YA 2015
(a) YA 2013 — $40,000	$24,000			$16,000		
(b) YA 2014 — $40,000		$24,000			$16,000	
(c) YA 2015 — $40,000			$24,000			$16,000
(E) CA/IBA & losses	YA 2013	YA 2014	YA 2015	YA 2013	YA 2014	YA 2015
Current CA/IBA	$24,000	$24,000	$24,000	$16,000	$16,000	$16,000
Current loss	5,400	3,000		3,600	2,000	
Past CA/IBA & losses		29,400	56,400		19,600	37,600
Cumulative	$29,400	$56,400	$80,400	$19,600	$37,600	$53,600
(F) Contributed capital as at end of basis period	$50,000	$50,000	$60,000	$40,000	$30,000	$25,000
(G) Relevant deductions (Note 1)	CA/IBA $24,000 Loss 5,400 $29,400	CA/IBA $20,600	CA/IBA $ 9,400 Loss 600 $10,000	CA/IBA $16,000 Loss 3,600 $19,600	CA/IBA $10,400	
(H) Past relevant deductions (Note 2)		CA/IBA $24,000 Loss $ 5,400 $29,400	CA/IBA $44,600 Loss $ 5,400 $50,000		CA/IBA $16,000 Loss $ 3,600 $19,600	CA/IBA $26,400 Loss $ 3,600 $30,000

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	Mr Thomas (Example 1)			Ms Sharon (Example 2)		
(I) Restricted deductions — cumulative excess over contributed capital (Note 3) [(E)–(F)]		$3,400	$17,400		$5,600	$14,600
CA/IBA c/f		3,000	3,000		2,000	2,000
Losses c/f		$6,400	$ 20,400		$7,600	$16,600
(J) Deemed income/Deemed loss (Note 4)						Contri cap $25,000 *Less:* CA/IBA (26,400) Loss (3,600) Deemed inc 5,000 Deemed loss 5,000

Notes:

(1) The relevant deductions refer to those CA and/or business losses that a partner of an LLP could claim as deductions against his non-LLP income. The amount of deductions is restricted to the difference between the partner's contributed capital as at the end of the basis period for that YA and the past relevant deductions.

(2) The past relevant deductions for any YA refer to the aggregate of all relevant deductions allowed to the partner less any amount deemed to be income chargeable with tax in past YAs.

(3) Where any amounts of CA and/or business losses are restricted, the restricted deductions cannot be set off against any non-LLP income for that year. Those amounts can be carried forward and set off against the following year's income derived from the LLP, subject to the usual business continuity test and the shareholders' continuity test, where applicable.

(4) As the contributed capital as at 31 December 2014 is lower than the past relevant deductions, the difference of $5,000 will be deemed as income chargeable with tax under s 10(1)(g). Concurrently, an amount of the same value is allowed as a loss deduction against the income of the LLP for that YA.

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	YA 2013			YA 2014			YA 2015		
	$	$	$ Restrict	$	$	$ Restrict	$	$	$ Restrict
Trade Income									
LLP		0			0			18,000	
Less: CA/IBA b/f		0			0		(3,400)		
Current CA		(24,000)			(20,600)	3,400	(24,000)	(27,400)	
		(24,000)			**(20,600)**			**(9,400)**	
Partnership	20,000			30,000			12,000		
Less: CA/IBA	(5,000)	15,000		(9,000)	21,000		(8,000)	4,000	
Sole proprietorship	8,000			24,000			15,000		
Less: CA/IBA	(30,000)	(22,000)		(9,000)	15,000		(11,000)	4,000	
		(31,000)			15,400			(1,400)	
Rental Income		100,000			98,000			87,000	
Statutory income		69,000			113,400			85,600	
Less: LLP loss b/f								**(600)**	2,400
Less: LLP current loss		**(5,400)**			0	3,000		0	
Assessable Income		63,600			113,400			85,000	
Less: Personal Relief (say)		(5,000)			(5,000)			(5,000)	
Chargeable Income		58,600			108,400			80,000	
Tax payable		2,674			8,860			4,600	
Relevant deductions		29,400			20,600			10,000	
Past relevant deductions		0			29,400			50,000	
Cumulative relevant deductions		29,400			50,000			60,000	
Cumulative LLP CA/IBA & losses		29,400			56,400			80,400	
Less: Set off against LLP profit		0			0			(18,000)	
Set off against other sources		**(29,400)**			**(50,000)**			**(60,000)**	
LLP CA/IBA & losses c/f		0			6,400	6,400		2,400	2,400
– CA/IBA for YA 2014				3,400			0		
– Loss for y/e 31 December 2013				3,000			2,400		

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		YA 2013			YA 2014			YA 2015	
	$	$	$	$	$	$	$	$	$
Trade Income			**Restrict**			**Restrict**			**Restrict**
LLP		0			0			12,000	
Less: Deemed loss								(5,000)	
								7,000	
Less: CA/IBA b/f		0			0		(5,600)		
Current CA		(16,000)			(10,400)	5,600	(16,000)	(21,600)	14,600
		(16,000)			**(10,400)**			(14,600)	
Sole proprietorship	12,000			8,000			5,000		
Less: CA/IBA	(5,000)	7,000		(9,000)	(1,000)		(1,000)	4,000	
		(9,000)			(11,400)				
Employment income		50,000			60,000			65,000	
Rental Income		8,000			8,000			7,000	
Deemed income		0			0			**5,000**	
Statutory income		49,000			56,600			81,000	
Less: LLP loss b/f		0			0			0	2,000
Less: LLP current loss		**(3,600)**			0	2,000		0	
Assessable Income		45,400			56,600			81,000	
Less: Donation		1,200			1,200			1,200	
Assessable Income		44,200			55,400			79,800	
Less: Personal Relief (say)		(11,000)			(13,000)			(14,000)	
Chargeable Income		33,200			42,400			65,800	
Tax payable		592			1,216			3,322	
Relevant deductions		19,600			10,400			0	
Past relevant deductions		0			19,600			30,000	
Less: Deemed income		0			0			(5,000)	
Cumulative relevant deductions		19,600			30,000			25,000	
Cumulative LLP CA/IBA & losses		19,600			37,600			53,600	
Less: Set off against LLP profit		0			0			(12,000)	

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	YA 2013			YA 2014			YA 2015		
	$	$	$	$	$	$	$	$	$
Set off against other sources		(19,600)			(30,000)	—		(25,000)	—
LLP CA/IBA & losses c/f		0			7,600	7,600		16,600	16,600
– CA/IBA for YA 2014				5,600					
– loss for y/e 31 December 2013				2,000			2,000		
– CA/IBA for YA 2015							14,600		

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Transfer of relevant deductions

A corporate partner of an LLP is allowed to transfer its share of CA, business loss and/or donations (referred to in the Act as "transferred deductions") for the current YA to a qualifying company under the group relief scheme (s 37C) (see ¶9-500) provided the conditions in s 37C are satisfied.

Similarly, an individual partner of an LLP can transfer his share of CA, business loss and/or donations for the current YA to his spouse (ie "transferred deductions") under s 37D "Transfer of qualifying deductions between spouses" before YA 2016. As a transitional concession, transferred deductions incurred in and before YA 2015 may be transferred to a spouse until YA 2017 subject to existing rules (see ¶9-600).

The amount of transferred deductions cannot exceed an amount determined as follows:

$$(A - B - C - D)$$

where	A	is the contributed capital in that YA
	B	is the past relevant deductions (ie CA and business losses) already allowed to the partner
	C	is the relevant deduction for CA allowed to the partner in that YA, and
	D	is the relevant deduction for business losses allowed to the partner in that YA.

Carry-back of relevant deductions

The carry-back scheme is effective from YA 2006. An LLP partner can carry back his current year unabsorbed CA and/or business losses for set-off against his assessable income of the immediate preceding YA subject to certain conditions (see ¶9-700).

An individual LLP partner can also transfer his share of unabsorbed CA and/or business loss for the current YA to his spouse for set-off against the spouse's assessable income of the immediate preceding YA (s 37F) (see ¶9-700). Transfer of unabsorbed CA and/or business loss to a spouse will no longer be allowed from YA 2016. However, as a transitional concession, unabsorbed CA and/or business loss incurred in and before YA 2015 may be transferred to a spouse until YA 2017 subject to existing rules.

The amount of carry-back deductions cannot exceed an amount determined as follows:

$$(A - B - C - D - E)$$

where	A	is the contributed capital in that YA
	B	is the past relevant deductions (ie CA and business losses) already allowed to the partner
	C	is the relevant deduction for CA allowed to the partner in that YA
	D	is the relevant deduction for business losses allowed to the partner in that YA, and
	E	is the transferred deduction transferred by the partner in that YA.

Determining a partner's contributed capital

The contributed capital of a partner of an LLP for any YA is the aggregate of the following (s 36A(10)):

(a) the amount, as at the end of the basis period for that YA, that the partner has contributed (in cash or in kind but not including any loan by him to the LLP) to the LLP as capital, and has not, directly or indirectly, been drawn out or received back by him (whether as a distribution or a loan or otherwise), and

(b) the amount, as at the end of the basis period for that YA, of any profits or gains of the TBP or vocation from any YA to which he is entitled as a partner but which he has not, directly or indirectly, received (whether as a distribution or a loan from the LLP or otherwise).

A partner's contributed capital will therefore not include any capital that the partner has agreed to contribute but has not actually been contributed to the LLP.

A partner must submit an independent valuation report for contributions of capital made by him in the form of real property, shares and securities, or IP whose value exceeds $500,000. For other types of contribution in kind, a partner need not submit a valuation report unless required by Comptroller.

Reduction in a partner's contributed capital

A partner's contributed capital will be reduced by a withdrawal of capital that a partner had previously contributed to the LLP or a withdrawal of any portion of his share of the LLP profits or gains of the TBP or vocation for past years that had not been previously withdrawn. A withdrawal includes a withdrawal by way of a distribution, loan or otherwise.

If a reduction of contributed capital occurs in any YA and the partner's past relevant deductions exceed his reduced contributed capital at the end of the basis period relating to that YA, the excess is deemed to be the partner's income for that YA chargeable with tax under s 10(1)(g) (s 36A(5)). Concurrently, an equal amount will also be deemed to be the partner's share of the loss incurred by the LLP for that YA. This deemed trade loss in excess of a partner's share of LLP income for that YA can be carried forward to subsequent YAs for set-off against his future LLP income.

Notwithstanding that tax is payable, such deemed income of the partner for that YA will be subtracted from the partner's past relevant deduction when applying the relevant deduction restriction in subsequent YAs.

The application of the deemed income rule is explained in Example 5 in the case of Ms Sharon for YA 2014.

Investment LLP

Where an LLP is in the business of making investments, the tax treatment of s 10E would apply. The partner's share of investment income from the LLP will be treated as business income under s 10(1)(a). Note that any deductions for expenses and outgoings and any claims for CA will be restricted according to the provisions of s 10E.

Changes in LLP ownership and dissolution of LLP

For income tax purposes, the admission of partner(s) into or the withdrawal of partner(s) from an LLP will not affect the tax status of the LLP. As an LPP has perpetual succession, there is no cessation of the TBP or vocation of all the partners.

Any withdrawal of partner(s) will not result in the dissolution of the LLP. Where a partner withdraws from an LLP in a basis period relating to a YA, the withdrawing partner is said to have ceased to carry on the same TBP or vocation.

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Dissolution of an LLP will take place when the LLP is deregistered from the registry of LLPs. When an LLP is being wound up, the income of the LLP will continue to be assessed on the partners. The liquidator of the LLP will be responsible for all tax matters.

Administrative matters

The precedent partner, to be determined in accordance with s 71, is required to make and deliver, together with the income tax return of the LLP or when required by the Comptroller by notice in writing, a return of the contributed capital of each partner of the LLP for any YA (s 36A(8)).

There is no statutory requirement for the accounts of an LLP to be audited. However, an LLP is required to maintain proper accounting books and records.

An LLP with a turnover of $500,000 or more is required to submit, together with its income tax return, financial statements that have been certified true and correct by the LLP manager to the Comptroller. Where the turnover is less than $500,000, the LLP need not submit any financial statements when filing its income tax return. However, like a sole proprietorship or an existing partnership, it must declare the following on its income tax return:

- amount of turnover
- gross profit
- allowable business expenses, and
- adjusted profit/loss.

LIMITED PARTNERSHIPS

¶11-450 Limited and general partners

Limited partnerships (LPs) are governed by the *Limited Partnerships Act (Cap 163B, 2010 Revised Ed)* (the "LP Act") which came into operation on 4 May 2009.

An LP is an unincorporated body of persons who have entered into a partnership with one another with a view to carrying on a business for profit. It is similar to a general partnership except that it consists of both limited and general partners. An individual or a corporation can be a limited partner or a general partner. An LP will not be dissolved by the death, dissolution, bankruptcy or liquidation of a limited partner.

A limited partner is not liable for the debts or obligations of the partnership firm other than the amount of his agreed contributed capital. A limited partner is not allowed to participate in the management of the LP other than what is allowed under the First Schedule to the LP Act. If a limited partner participates in the management of the LP, he will be regarded as a general partner and will be liable for all debts and obligations of the LP incurred during the period of his management of the LP.

A general partner is personally liable for all the debts, obligations and liabilities of the LP. Where an LP has two or more general partners, the general partners are jointly and severally liable for all debts, obligations and liabilities of the LP. A general partner can take part in the management of the LP and share in the right to use partnership property as well as the profits of the firm in a pre-defined proportion.

¶11-451 Income tax treatment of LPs

The tax treatment of an LP is similar to that of a general partnership and an LLP (see IRAS e-Tax Guide "Income Tax Treatment of Limited Partnerships (LPs)", updated on 1 March 2014). Under the flow-through treatment, the income of an LP will not be subject to tax in the hands of the partnership. Instead, each partner of the LP will be chargeable to tax on his share of the LP's income. Note that the tax treatment for general partners and limited partners of an LP are different.

General partners

The general partners of an LP are treated in the same manner as the partners of a general partnership for income tax purposes.

Limited partners

The tax treatment for limited partners of an LP is similar to that for LLP partners (see ¶11-420). Where the cumulative relevant deductions of a limited partner exceed his capital contribution due to a reduction in his capital contribution, the excess is deemed income chargeable to tax on him. Similarly, the deductibility of a limited partner's share of CA, IBA and/or trade losses of an LP is subject to the same relevant deduction restriction rules applicable to the partners of an LLP.

Administrative requirements

Where an LP has incurred a business loss, the LP is required to submit a Capital Contribution Form with its tax return for the YA in which the loss is incurred, and for all subsequent YAs, whether or not it makes a profit or loss for those years.

PUBLIC-PRIVATE PARTNERSHIPS

¶11-490 Public-Private Partnerships

Traditionally, for the delivery of services to the public, the public sector would construct, operate and maintain the public facilities and infrastructure (eg roads, bridges, tunnels, prisons, hospitals, airports, water distribution facilities, energy supply and telecommunication networks). From 2003, the Government has started to engage the private sector in a Public-Private Partnership (PPP) arrangement as an alternative form of procurement of services. The PPP is usually a long-term partnership arrangement between the public and private sectors to deliver services to the public.

Under a PPP arrangement, the private sector service provider (PPP operator) may typically provide a composite of such services as:

- designing and constructing the facilities
- raising funds from investors, financial institutions, etc, to build public facilities
- leasing the facilities, and/or
- operating and maintaining the facilities.

In return, the Government pays the PPP operator user charges or periodic service payments (unitary payments) for services rendered throughout the duration of the partnership. As for the legal and economic ownership of the PPP assets, it may be vested with one of the contracting parties or be jointly owned by the parties concerned.

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Chapter 11

¶11-491 PPP arrangements and their tax treatment

The IRAS e-Tax Guide "Tax Treatment of Public-Private Partnership Arrangements" (2nd Ed), published on 27 December 2013 presents the following three PPP arrangements:

- operation and maintenance (O&M) service provider
- design, construction and O&M service provider, and
- finance lease lessor cum O&M service provider.

The e-Tax Guide clarifies the Comptroller's approach in establishing the scope of services carried on by a PPP operator as well as the income tax treatment for these PPP arrangements.

The tax treatment of the income derived by and the expenses incurred by a PPP operator under a PPP arrangement will depend, *inter alia*, on:

- the economic/beneficial ownership of the underlying assets/infrastructure
- the types of services provided by the PPP operator, and
- the terms and conditions of the PPP arrangement.

The Comptroller has stated that he will accept the accounting treatment of a PPP arrangement when determining the scope of a PPP operator's trade for tax purposes subject to certain variations. Generally, the characterisation of a PPP operator's trade should not be different for accounting and income tax purposes. This is because for both purposes, both the substance of an arrangement and the legal form will be considered.

O&M service provider

Under this arrangement, the PPP operator will build a PPP asset and will have the legal and beneficial/economic ownership of the asset. The PPP operator is entitled to claim any IBA and/or CA for the qualifying capital expenditure incurred on the PPP asset which will be reflected in the PPP operator's accounts as its fixed asset under FRS 16 "Property, Plant and Equipment".

For the O&M services provided by the PPP operator, the operator will be taxed on the payments received from the public sector as and when the service income accrues to it.

Finance lease lessor cum O&M service provider

Under this arrangement, the PPP operator will build or buy a PPP asset, and then lease the asset to the public authority. The PPP operator will also operate and maintain the asset for the public authority.

This PPP arrangement is treated as having two elements — a finance lease arrangement and a service component. The unitary payments received by the PPP operator would therefore comprise two elements, a lease payment and a service fee.

Under the finance lease arrangement, the beneficial/economic ownership of the PPP asset will lie with the public authority although the legal ownership of the asset is with the operator. The PPP asset will be reflected in the accounts of the public authority and not that of the PPP operator (FRS 17 "Leases"). It has been legislated that the public authority is the party entitled to any claims for CA or IBA (s 10F(1)(i)). The PPP operator is not entitled to such claims.

The portion of the lease payment representing the principal repayment of the construction costs of the PPP asset, or the capital expenditure of the purchased PPP asset incurred by the operator, is not taxable in the hands of the operator (s 10F(1)(ii)). The portion of the lease payment representing the finance income will be subject to tax over the term of the PPP project. The service fee will be taxed as and when it accrues to the PPP operator.

In the situation where the PPP operator is a manufacturer of the leased asset or a dealer lessor (ie one that acquires and sells the leased asset) under FRS 17, the income of such a PPP operator would comprise:

- profit/loss resulting from an outright sale of the asset being leased
- finance income over the lease term, and
- service fees.

The PPP operator will be taxed on the profit from the outright sale of the leased asset as and when the profit is recognised in its accounts as well as on the finance income over the lease term. The service fees will be taxed as and when they accrue in the operator's accounts.

Design, construction and O&M service provider

Under this arrangement, the PPP operator designs and constructs the asset/facility, and thereafter provides O&M services to the public sector. The legal title to the asset may be held either by the operator or the public authority, depending on the agreement. However, the PPP asset will be controlled by the public authority.

This PPP arrangement falls within the scope of the Interpretation of Financial Reporting Standard 112 (INT FRS 112) "Service Concession Arrangements". The INT FRS 112 provides the following two methods for the recognition of the PPP asset:

(a) The PPP operator will recognise the PPP asset as a financial asset under the "financial asset model" where the PPP operator has an unconditional contractual right to receive cash from the Government. Most PPP arrangements in Singapore would fall within this category.

(b) The operator will recognise the asset as an intangible asset under the "intangible asset model" where the PPP operator receives a right to charge users of the public service.

The PPP operator would have two streams of income. Firstly, the revenue generated during the construction stages will be recognised in accordance with FRS 11 "Construction Contracts". During the O&M phase, the revenue will be recognised according to FRS 18 "Revenue".

Financial asset model

Where the PPP asset is recognised as a financial asset under the "financial asset model" (this is the situation where the PPP operator receives periodic unitary payments from the Government), the PPP operator can elect either Option 1 or Option 2 below to determine the amount of income derived from the construction of the asset for tax purposes.

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Option 1

Under FRS 11 "Construction Contracts", the operator earns its revenue from the construction of the PPP asset throughout the course of the construction of the PPP asset. Following the accounting treatment, the operator will be taxed on its construction income as and when the income accrues. Expenditure of a revenue nature incurred from the commencement of business (ie design costs, construction costs, etc) will be deductible subject to s 14 and 15.

Under Option 1, construction income, finance income and service revenue will be subject to tax as and when they are recognised in the profit and loss account.

Option 2

The PPP contract is usually structured such that the unitary payments are made to the PPP operator upon the completion of construction of the PPP asset, and the operator is in a position to perform the services under the PPP contract. This is unlike normal construction contracts where progress payments are received at regular intervals throughout the construction period.

In such instances, a PPP operator can elect Option 2, ie to be taxed on the construction income and finance income only upon the completion of the PPP asset instead of being taxed on its construction income during the construction phase. Similarly, interest costs incurred during the construction period will be deferred as part of construction costs and claimed as deductions upon completion of the PPP asset.

Note that Option 2 will impact only the timing of the taxation of construction income and finance income, and the deductibility of interest costs during the construction phase. The taxability of all other revenue and the deductibility of expenditure incurred will not be affected and will be in accordance with the normal tax rules throughout the PPP project.

Once a PPP operator has submitted its first set of income tax return for the PPP project based on Option 2, the election is irrevocable. The same tax treatment will be applied consistently for all subsequent YAs.

HINDU JOINT FAMILY

¶11-500 Hindu joint family

The definition of a "person" included a Hindu joint family (the old s 2). A Hindu joint family, also referred to as a "Hindu undivided family", is a separate entity for income tax purposes. It is represented by the "karta" or manager.

The concept of "Hindu joint family" was removed with effect from YA 2013.

For details on the taxation of Hindu joint family up to YA 2012, please refer to the 2014/2015 edition of this book.

CHAPTER 12

TAXATION OF RESIDENT INDIVIDUALS

¶12-000 Introduction

This chapter examines how an individual resident in Singapore is taxed on his income. ¶13-100 examines the taxability of an individual not resident in Singapore while ¶2-610 examines how one determines the residency of an individual.

Income of a resident individual

The income of an individual resident in Singapore could comprise some or all of the following (s 10(1)):

(a) gains or profits from the carrying on of any trade, business or profession (TBP) or vocation either as a sole proprietor or a partner in a partnership

(b) gains or profits from any employment

(c) dividends, interest or discounts

(d) pension, charge or annuity

(e) rents, royalties, premiums and any other profits arising from properties, and

(f) any other gains or profits of an income nature not included in (a) to (e) above.

Statutory income

The full amount of the above income after deducting any capital allowances allowed under s 35(2) is referred to as *statutory income*.

Assessable income

Against that statutory income, a resident individual is allowed to deduct any losses incurred in any TBP or vocation and any approved donations (s 37(1)). The balance is then referred to as *assessable income*.

Chargeable income

Against that assessable income, an individual resident in Singapore is allowed reliefs under s 39 if that individual satisfies the relevant conditions. These reliefs are deductions allowed against a taxpayer's income and they include:

- earned income relief
- spouse relief
- handicapped spouse relief
- child relief
- aged parent/grandparent relief
- handicapped sibling relief
- relief for grandparent caregiver
- national serviceman relief
- relief for life insurance premiums and contributions to approved pension, provident fund or society
- relief for Central Provident Fund (CPF) contributions by self-employed person
- relief for CPF cash top-up of retirement accounts
- relief for contributions under the Supplementary Retirement Scheme (SRS)
- relief for course fees, and
- relief for foreign maid levy.

The remaining balance is referred to as *chargeable income* to which the individual's relevant tax rate is applied to compute the tax liability.

Tax rates

The tax rates are then applied on the individual's chargeable income to determine his income tax liability. The graduated rates specified in Pt A of the Second Schedule for the different income bands can be found in ¶12-500. The first $20,000 of chargeable income is basically exempted from tax as such income is subject to a zero tax rate.

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Chargeable income above $20,000 but below $320,000 is subject to different tax rates. Chargeable income above $320,000 is subject to the highest marginal tax rate of 20%.

As announced in the 2015 Budget, a new personal income tax rate structure for a resident individual will take effect from YA 2017 (see ¶12-500).

Tax rebates

Tax rebates are reliefs that are granted to resident individuals for set-off against their income tax liabilities. To encourage married couples to have children, a parenthood tax rebate is granted to an eligible individual resident in Singapore with a newborn child (s 42A; ¶12-310).

A summary of the main reliefs under s 39 and the parenthood rebates available to resident individual taxpayers is presented in ¶12-400.

¶12-100 Taxation of husband and wife

Laws applicable from YA 2005

From YA 2005, the income of a married couple, ie husband and wife, is assessed separately under the person's own name. Section 51(1) provides that the income of a married woman is to be assessed separately under her own name.

Where both husband and wife are eligible to claim the same s 39 reliefs (eg normal child relief) and/or parenthood tax rebates, the relevant reliefs/rebates would be apportioned between them on a reasonable basis.

From YA 2010, male and female taxpayers supporting their spouses can claim spouse relief (see ¶12-220). Up to YA 2009, only male taxpayers supporting their wives could claim wife relief under certain conditions.

Transfer of qualifying deductions between spouses

Where one spouse has an excess of the following qualifying deductions that cannot be completely set off against his income for the YA, that spouse can elect to transfer the qualifying deductions to be set off against the income of the other spouse (ie transferee spouse) (s 37D):

- unabsorbed capital allowances
- unabsorbed business losses, and
- unabsorbed approved donations.

After the qualifying deductions are first set off against the assessable income of the spouse whose activities give rise to the deductions, any excess is then available for transfer in the following order — capital allowances, business losses and lastly, donations. The transferee spouse must have assessable income before a transfer can be allowed. The amount of qualifying deductions to be transferred is restricted to the amount of assessable income of the transferee spouse (s 37D(4)).

Transfer of rental deficit

Where both spouses have real properties that are rented out and one spouse has incurred a rental deficit, under an administrative concession, that spouse with the rental deficit can elect to transfer the rental deficit for set-off only against his spouse's taxable rental income. The rental deficit cannot be set off against any other income of the transferee spouse. The amount of rental deficit available for transfer is restricted to the actual net rental income of the transferee.

Procedure for transfer of qualifying deductions and rental deficit

An annual election has to be made by both spouses to effect the transfer of qualifying deductions and rental deficit between spouses. The election must be made before the end of 30 days from the date of service of the notice of assessment of the individual or the individual's spouse, whichever is the later. The election is not to be made at the time of submission of the tax returns. The election once made cannot be revoked, unless allowed by the Comptroller of Income Tax (the "Comptroller") (s 37D(5) and 37D(6)).

Example 1

Assume Mr and Mrs Chan submitted their separate tax returns for YA 2015 with the following information:

Mr Chan	$
Adjusted business profits	4,500
YA 2014 capital allowances b/f	(22,000)
YA 2014 business loss b/f	(53,390)
Employment income	15,000
Net rental loss	(3,900)
Approved donations	2,000

Mrs Chan	$
Adjusted business profits	25,000
Employment income	23,000
Interest income (non-exempt)	1,790
Net rental income	11,000

Assume the Comptroller has accepted the above tax returns as filed and has issued the appropriate tax assessments with the following information:

Mr Chan's assessment for YA 2015	$
Adjusted business profits	4,500
Less: YA 2014 capital allowances b/f	(19,500)
Employment income	15,000
Statutory income	NIL

The following qualifying deductions are available for transfer to Mrs Chan in YA 2015:

	$
YA 2014 capital allowances ($22,000 – $19,500)	2,500
YA 2014 business loss	53,390
YA 2015 net rental loss	3,900
YA 2015 approved donations	2,000

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Mrs Chan's assessment for YA 2015	$
Adjusted business profits	25,000
Employment income	23,000
Interest income (non-exempt)	1,790
Net rental income	11,000
Statutory income	60,790

Both Mr and Mrs Chan can elect in writing to transfer the qualifying deductions from Mr Chan to Mrs Chan for YA 2015. The final assessments after the transfer would be as follows:

YA 2015 final assessment for Mr Chan

Qualifying deductions transferred to Mrs Chan in YA 2015:	$
YA 2014 capital allowances	2,500
YA 2014 business loss	53,390
YA 2015 net rental loss	3,900
YA 2015 approved donations	1,000
YA 2015 approved donations c/f to YA 2016	1,000

YA 2015 final assessment for Mrs Chan

	$	$
Adjusted business profits		25,000
Less: Transfer from spouse:		
YA 2014 capital allowances	2,500	
YA 2014 business losses	22,500	25,000
		0
Net rental income	11,000	
Less: YA 2015 rental deficit transferred from spouse	3,900	
		7,100
Employment income		23,000
Interest income (non-exempt)		1,790
		31,890
Less: Balance of YA 2014 business loss transferred from spouse ($53,390 – $22,500)		30,890
		1,000
Less: YA 2015 donations transferred from spouse		1,000
Assessable income		0

As announced in the 2014 Budget, to simplify the personal income tax system, a married couple will no longer be allowed to transfer qualifying deductions and rental deficits between each other with effect from YA 2016.

Any unabsorbed trade losses or capital allowances may still be carried forward to future years to be set off against the future income of the taxpayer until the amount is fully utilised subject to existing rules. Similarly, any unutilised donations may be carried forward to future years to be set off against the future income of the taxpayer up to a maximum of five years.

As a transitional concession, qualifying deductions and rental deficits incurred by a married taxpayer in YA 2015 and earlier YAs will still be allowed to be transferred to the spouse until YA 2017 subject to existing spousal transfer rules.

Details of the change can be found in the IRAS e-Tax Guide "Change to Assess the Income of a Husband and Wife as Separate Individuals", published on 26 May 2014.

RELIEFS UNDER S 39

¶12-200 Reliefs under s 39

Section 39 lists the different reliefs that an individual taxpayer, who is a resident in Singapore in the YA, is allowed to claim against his assessable income. An individual who is a non-resident is not entitled to claim any relief under s 39.

¶12-210 Earned income relief

Section 2 defines "earned income" as the statutory income of an individual or a Hindu joint family (up to YA 2012) from:

(a) gains or profits from a TBP, vocation or employment on which tax is payable (ie s 10(1)(a) and 10(1)(b) income source), and

(b) any pension in respect of past services on which tax is payable (ie s 10(1)(e) income source),

after deducting any losses from s 10(1)(a) source or carry-back of capital allowance and losses (including between spouses) or qualifying deduction of capital allowance, loss and donations (excluding donations not deducted due to insufficient statutory income). Note that the concept of "Hindu joint family" was removed with effect from YA 2013.

The philosophy behind earned income relief is that it essentially differentiates between an individual's income earned from the carrying on of a business or employment and his income derived from investments. Unlike income from the latter source (eg rents, dividends and interest), income from the former source requires more active participation or the contribution of efforts by the individual.

The amount of relief granted is revised for elderly workers and handicapped workers with effect from YA 2013 to encourage elderly workers to stay employed and to provide further support to handicapped workers.

The individual taxpayer's age is determined by reference to his age at any time in the year immediately preceding the YA (ie basis year). A "handicapped" individual is one who, in the year immediately preceding the YA, was totally blind, or suffering from a physical or mental disability, which permanently and severely restricted his capacity to work.

¶12-220 Spouse relief

From YA 2010, a resident taxpayer can claim spouse relief of $2,000 if the spouse is living with or is being maintained by the taxpayer during the year preceding the YA and provided the spouse did not have income exceeding $4,000 in that basis year (s 39(2)(a)).

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Up to YA 2009, only a male resident taxpayer was entitled to wife relief of $2,000 if, during the year preceding the YA, his wife was living with him or was maintained by him and had income of not more than $2,000 in that year. He was not entitled to any wife relief if his wife's income was more than $2,000. Where a taxpayer had more than one qualifying wife, the maximum deduction remained at $2,000. A wife, on the other hand, was not eligible for relief for maintaining her husband.

A taxpayer can claim spouse relief if the taxpayer's spouse lives with him during, or the taxpayer maintains his spouse for, any part of the year preceding a YA. Living together is not given a strict literal meaning. It does not suggest that both spouses must be physically living under the same roof throughout the basis year. The intent, it is submitted, is the important factor. Thus, if one spouse is away on an extended holiday or business trip during the basis year, the relief is not denied. A married couple is regarded as living together unless (s 51(3)):

(a) they are separated under a court order or by a deed of separation

(b) they are in fact separated in such circumstances that the separation is likely to be permanent, or

(c) the wife is resident in Singapore but the husband is not.

A wife or married woman, used interchangeably in s 51, is not defined in the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act"). However, in s 2 of the *Women's Charter (Cap 353, 2009 Revised Ed)*, a "married woman" is defined as a woman validly married under any law, religion, custom or usage. In practice, this definition is commonly applied in determining the applicability of wife relief (or spouse relief with effect from YA 2010).

Alimony or other payments made to ex-wife

With effect from YA 2012, alimony or maintenance payments are tax exempt in the hands of female taxpayers and not allowable as spouse relief for male taxpayers. Before YA 2012, a taxpayer who pays alimony to his ex-wife qualifies for wife relief up to a maximum of $2,000 (the old s 39(2)(b)).

Where a taxpayer is separated from his wife and makes payments to her pursuant to a court order or deed of separation, relief for such payments is available up to a maximum of $2,000 (s 39(2)(c)). However, the total relief allowed to a taxpayer for maintaining his current wife and any ex-wives is $2,000.

Note that a female taxpayer who is separated from her husband cannot claim relief for any payments to her husband.

Handicapped spouse relief

A taxpayer can claim relief of $5,500 ($3,500 up to YA 2014) for maintaining a handicapped spouse (s 39(2)(d)(A)) or ex-spouse (s 39(2)(d)(B)) regardless of how much income the handicapped spouse has. Up to YA 2009, relief could only be claimed for maintaining a handicapped spouse or ex-spouse whose income, excluding maintenance or alimony paid by the claimant, did not exceed $2,000 in a year (the old s 39(2)(d)(ii)).

The handicapped spouse relief of $5,500 is allowed provided no other person has claimed the aged parent or handicapped sibling relief (available under s 39(2)(i) and 39(2)(j)) in respect of that handicapped spouse.

Where the taxpayer and his spouse are separated, the relief allowed will be the lower of $5,500 or the amount of payments made to the spouse in accordance with an order or deed of separation. Additionally, the aggregate of the handicapped spouse relief and standard spouse relief granted to a taxpayer cannot exceed $5,500 (proviso to s 39(2)(d)).

From YA 2012, the handicapped spouse relief is no longer granted to taxpayers who maintain their former handicapped spouses. Taxpayers who receive any alimony and maintenance payments made voluntarily or under a court order or deed of separation will no longer be taxed on such receipts.

¶12-230 Child relief

Relief for children is given under s 39(2)(e). A child is defined to be "a legitimate child, stepchild or child adopted in accordance with any written law relating to the adoption of children" (Fifth Schedule, para 7(a)). An illegitimate child is therefore not eligible for child relief. Where parents of an illegitimate child marry each other after the birth of the child, the marriage would legitimise the child. In practice, children of secondary wives (ie by customary marriage) are considered legitimate children and qualify for child relief.

A stepchild is a child by a former marriage of either the husband or the wife. An adopted child must be one who is legally adopted. Statutory declarations, signifying the taxpayer's intentions, consent and obligations to adopt a child, are not satisfactory evidence of adoption for the purposes of the Act (*Re R* (1951) FB IV).

The availability and the quantum of child relief are generally dependent on the following factors:

(a) the child's age, marital status and income, and
(b) the number of children the claimant has.

(A) Conditions for claims

Where the following conditions are satisfied, an individual is entitled to a claim for child relief (s 39(2)(e)):

(a) The child must be maintained by the claimant.
(b) The child must be unmarried in the year preceding the YA in which the claim is made.
(c) The child must be under 16 years at any time in the preceding year.
(d) If the child is over 16 years, he must be either:
  - receiving full-time education at a university, college, school or other educational institution
  - serving under articles or indentures with a view to qualifying in any trade or profession, or
  - incapacitated from maintaining himself by reason of physical or mental infirmity.

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Full-time education means that the curriculum of the educational institution requires the child to be studying full time. The phrase "other educational institution" is to be taken to mean one which is similar to a college, university or school. Tuition by correspondence is not regarded as instruction at an educational institution, nor are private lessons in the home (*Heaslip v Hasemer* (1927) 13 TC 212).

(e) The child must not have any income in his own right exceeding $4,000 ($2,000 up to YA 2009) in the year preceding the YA. In computing the child's income for any year, any amounts received relating to scholarships, bursaries or similar educational endowments are disregarded. The income threshold does not apply in the case of a handicapped child from YA 2010.

(f) The child must not have exercised a TBP or employment (other than serving under articles or indentures) in the preceding year.

(g) The child must be a legitimate child, stepchild or legally adopted child of the claimant.

Child relief can be claimed for the maintenance of an unmarried child outside Singapore as long as the above conditions are satisfied.

(B) Types of child relief

There are three types of child relief, namely:

(a) Qualifying child relief (QCR)

(b) Handicapped child relief (HCR), and

(c) Working mother's child relief (WMCR).

Qualifying child relief

From YA 2009, the QCR claimable by either parent for each qualifying child is $4,000 (Fifth Schedule, para 1(b)).

Handicapped child relief

This relief can be claimed by parents for maintaining an unmarried child who is incapacitated from maintaining himself by reason of physical or mental infirmity (s 39(2)(e)(iv)).

From YA 2015, the HCR is increased to $7,500 (it was $5,500 from YA 2009).

There is no age limit for this relief.

Example 2

Anthony has five children aged 25, 23, 20, 17 and 10 years old. The first child is studying to be a mining engineer in Australia and the second child is a student in the Malaysian College of Languages in Kuala Lumpur. The third and fourth children are studying in Singapore. The fifth child is physically handicapped.

The child reliefs available to Anthony for YA 2015 will be:

	Child relief **\$**
1st child (QCR)	4,000
2nd child (QCR)	4,000
3rd child (QCR)	4,000
4th child (QCR)	4,000
5th child (HCR)	7,500
Total	23,500

Working mother's child relief (WMCR)

Working mothers, including divorcees or widows who have maintained a qualifying child in the year preceding the YA, can claim the WMCR. The qualifying child must be a citizen of Singapore as at 31 December of the year immediately preceding the YA. From YA 2009, the WMCR can be claimed for the first and subsequent eligible child as follows:

	% of her earned income **From YA 2009**
1st eligible child	15%
2nd eligible child	20%
3rd and subsequent eligible child	25%

Note that the total deductions allowed for the WMCR cannot exceed 100% of the mother's earned income, ie the cumulative WMCR percentages are capped at 100% of the mother's earned income (Fifth Schedule, para 5(3)).

The WMCR is granted to only one claimant (Fifth Schedule, para 5(2)). Where there is more than one claimant for the WMCR for the same child, the Comptroller will decide, having regard to the circumstances of the case, which claimant will be allowed the relief.

(C) Maximum relief per child and order of relief

The maximum relief (ie QCR/HCR and WMCR) allowable to all qualifying parents in respect of each child is restricted to \$50,000 from YA 2009 (Fifth Schedule, para 6(2)).

Where the total amount of child relief (QCR/HCR and WMCR) exceeds the maximum allowable relief, the QCR or HCR is to be given the priority of claim and the amount of WMCR will be restricted accordingly (Fifth Schedule, para 6(3)). In addition, where relief for the same child has been claimed by or is apportioned between two parents, the total deductions granted to both parents would be restricted to the maximum relief claimable.

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Example 3

Dr Khoo, a married woman who runs her own medical clinic, qualifies for the WMCR for each of her three children. Assume her business income for 2014 was $220,000 and that her husband did not claim any child relief.
For YA 2015, she can claim the following child relief:

	$
1st child ($4,000 + $33,000 (15% of $220,000))	37,000
2nd child ($4,000 + $44,000 (20% of $220,000))	48,000
3rd child ($4,000 + $55,000 (25% of $220,000))	*50,000
Total child relief	135,000

* restricted to $50,000

If her husband decides to claim the QCR, the reliefs claimable by both parents would be as follows:

	Husband $	Wife $
1st child	4,000	
1st child (15% of $220,000))		33,000
2nd child	4,000	
2nd child (20% of $220,000))		44,000
3rd child	*4,000	
3rd child (25% of $220,000 but restricted)		*46,000
Total child relief	12,000	123,000

* restricted to maximum relief of $50,000

(D) Allocation of relief between parents

The WMCR can be claimed only by the mother while the QCR and the HCR can be claimed by either parent. Generally, it is more beneficial for the spouse with the higher marginal tax rate to claim the QCR and/or the HCR. Where both parents claim relief for the same child, the relief will be apportioned in such manner as appears to the Comptroller to be reasonable (Fifth Schedule, para 4). In the case of separation or divorce, the Comptroller may apportion the claim either on the basis of time that the child spent with each parent or on the amount expended by each parent.

Example 4

For the year 2014 Mr and Mrs Tan do not have any other income except business income of $200,000 and $140,000 respectively in their own rights. They have three children below 12 years of age. As Mr Tan has higher income chargeable to tax, it would be more beneficial for him to claim the QCR for all three children and for Mrs Tan to claim the WMCR. The child reliefs claimable by Mr and Mrs Tan for YA 2015 would be as follows:

		Mr Tan $		Mrs Tan $
Child	– 1st child	4,000	(15% × $140,000)	21,000
	– 2nd child	4,000	(20% × $140,000)	28,000
	– 3rd child	4,000	(25% × $140,000)	35,000
		12,000		84,000

¶12-250 Relief for dependent relatives

Parent, grandparent, etc, relief (s 39(2)(i))

An individual resident in Singapore can claim either the "normal parent relief" or the "handicapped parent relief" for qualifying dependants.

A qualifying dependant is one who:

(a) is a parent, grandparent or great-grandparent of the taxpayer or the taxpayer's spouse

(b) lives in Singapore

(c) does not have income in his own right exceeding $4,000 ($2,000 up to YA 2009) in the year preceding the year of claim

(d) is at least 55 years of age (ie an aged dependant) or incapacitated due to physical or mental infirmity (ie a handicapped dependant — supporting medical certificate detailing the nature of the dependant's handicap is required), and

(e) is living in the same household with or is maintained by the taxpayer. The amount spent on maintenance must not be less than $2,000 or such lower amount as the Comptroller may determine.

Note that from YA 2010, the income threshold in note (c) does not apply in the case of a handicapped dependant.

The quantum of the normal and handicapped parent reliefs, dependent on the above conditions (d) and (e), is as follows:

From YA 2015	Living with taxpayer	Not living with taxpayer
Normal parent relief (ie dependant ≥ 55 years old)	$9,000	$5,500
Handicapped parent relief (ie incapacitated dependant, no age ceiling)	$14,000	$10,000

From YA 2010	Living with taxpayer	Not living with taxpayer
Normal parent relief (ie dependant ≥ 55 years old)	$7,000	$4,500
Handicapped parent relief (ie incapacitated dependant, no age ceiling)	$11,000	$8,000

An individual can claim relief for only two qualifying dependants. Relief will be granted only if no other person has claimed any other relief (eg spouse relief, handicapped spouse relief) in respect of that dependant.

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Where two or more taxpayers can claim relief for the same dependant, they have to agree among themselves as to who should claim the relief. If the claimants cannot agree among themselves, the Comptroller will decide as to whom the relief will be given. The relief cannot be apportioned.

Handicapped sibling relief (s 39(2)(j))

A deduction of $5,500 ($3,500 up to YA 2014) is allowed for each qualifying dependent sibling. Relief will be granted only if no other person has claimed any other relief (eg spouse relief, handicapped spouse relief or child relief) in respect of that dependent sibling.

A qualifying dependent sibling is one who:

(a) is the taxpayer's brother or sister, or the brother or sister of the taxpayer's spouse

(b) lives in Singapore

(c) is incapacitated due to physical or mental infirmity, and

(d) is living with or is otherwise maintained by the taxpayer.

Where a dependent sibling does not live with the taxpayer, the taxpayer must have incurred at least $2,000, or such lower sum as the Comptroller may determine, in maintaining the dependant in the year preceding the YA.

Where more than one person can claim relief for the same sibling, the relief will be apportioned between the claimants on a basis reasonable to the Comptroller.

¶12-255 Relief for grandparent caregiver

A married, widowed or divorced working mother who engages her parent or grandparent or the parent or grandparent of her spouse or ex-spouse to look after any of her children can claim relief of $3,000 (s 39(2)(p)). The relief for one caregiver can be deducted only against her earned income. This relief is given to recognise the role played by grandparents in providing childcare support.

The child must be aged 12 years or younger in the year preceding the year of claim. The child can be a legitimate child, stepchild or a legally adopted child but must be a Singapore citizen. The caregiver must be living in Singapore and should not be carrying on any TBP, vocation or employment in the year preceding the year of claim.

¶12-260 National serviceman relief

Assessment period for national servicemen (NSmen) tax relief

The NSmen tax relief period is based on the "relevant period" that commences on 1 April of the year immediately preceding the YA and ends on 31 March of the subsequent year. For example, the relevant period for YA 2015 commences on 1 April 2014 and ends on 31 March 2015.

Relief for NSmen

NSmen, other than NS key command and staff appointment holders, are entitled to the following tax reliefs (s 39(2A) and 39(2B)):

- $3,000 for a taxpayer who has performed operationally ready national service, ie an active NSman who has attended in-camp training in the previous year
- $1,500 for a taxpayer who has not performed operationally ready national service, ie an inactive NSman who did not attend in-camp training in the previous year.

The NSmen need not make a claim in their annual income tax returns as the relevant authorities will forward the information to the IRAS.

Relief for NS key command and staff appointment holders

From YA 2007, NS key command and staff appointment holders (ie persons appointed as such by the proper authority) are granted an additional tax relief of $2,000 over and above the normal reliefs. The reliefs are as follows (s 39(2A) and 39(2B)):

- $5,000 for a taxpayer who has performed operationally ready national service, or
- $3,500 for a taxpayer who has not performed operationally ready national service.

Relief for wives and widows of NSmen

A wife or widow of an operationally ready NSman will qualify for $750 tax relief if the following conditions are fulfilled (s 39(2)(m)):

(a) the wife or widow must be a citizen of Singapore

(b) the marriage must not have been dissolved by divorce or annulment, and

(c) her husband is entitled to the NSman relief for that YA.

Where the wife of an NSman dies during the year preceding the YA, the executor of the first wife is not entitled to claim the tax relief if the NSman remarries during the same tax basis period.

Where an NSman has more than one wife, only the wife nominated by him is allowed the relief. Similarly, only one widow is eligible for relief.

Relief for parents of NSmen

A parent of an operationally ready NSman will qualify for relief only if (s 39(2)(n)):

(a) the parent is a citizen of Singapore

(b) the NSman is his legitimate child, stepchild or legally adopted child, and

(c) the NSman is entitled to the NSman relief for that YA.

Each qualifying parent will receive a tax relief of $750 regardless of the number of children who have undergone national service. Only two parents can claim relief in respect of each NSman. If more than two parents are entitled to claim relief for the same NSman, the NSman must nominate (via Form IR 175) the two parents entitled to the relief. The IRAS will then grant the relief to the nominated parents automatically.

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Where an NSman has died during the year preceding the YA, his parents will continue to be eligible for tax relief. However, where an NSman dies during the basis period for any YA for which he is not entitled to the NSman relief, his parents will not be eligible for tax relief for that YA.

¶12-265 Relief for life insurance premiums

Relief is available for premiums paid on life insurance policies which cover the lives of the taxpayer and his wife. Premiums paid on an insurance policy, which covers risks other than death (eg accident or illness) do not qualify for deduction.

Life insurance premiums paid to foreign insurance companies are deductible only if the company has an office or branch in Singapore. This restriction does not apply to insurance contracts entered into by Singapore residents before 10 August 1973.

Where life insurance premiums are paid out of funds standing in an individual's SRS account, the premiums do not qualify for deduction (s 39(2)(g)(viii)).

A married woman can claim relief for premiums paid by her for her life insurance policy against her assessable income. Where her husband pays for her life insurance premiums, the husband is entitled to the deduction.

The relief for life insurance premiums is restricted to the lower of the amount of $5,000, the premiums paid and 7% of the capital sum assured on death. There is a further restriction where the individual contributes to the CPF or other approved pension/provident funds:

- as an employee (s 39(2)(g))
- as a self-employed person (s 39(2)(h)), and
- as an individual (s 39(2)(q)).

The amount of relief for life insurance premiums is best illustrated in the following table:

	Maximum relief for life insurance premiums
If c = 0 and p < $5,000	$p
If c = 0 and p > $5,000	$5,000
If c < $5,000 and p + c < $5,000	$p
If c < $5,000 and p + c > $5,000	$(5,000 – c)
If c > $5,000 and p + c > $5,000	$ nil

where c = amount of CPF contributions deductible under s 39(2)(g), 39(2)(h) and 39(2)(q)
p = lower of annual premium paid and 7% of capital sum assured.

There is no deduction for the premiums paid where the contributions to the CPF and other approved pension/provident funds is at least $5,000.

Example 5

Crystal has two life insurance policies with Great Eastern Life, a Singapore insurance company. Policy 1 secures an amount of $10,000 on death and the annual premium is $340. Policy 2 secures an amount of $30,000 on death and the annual premium is $2,750. In addition, she contributes $2,980 annually to the CPF.

The deductions she will be entitled to are as follows:

	$
Policy 1 — Annual premium	340
Policy 2 — Annual premium restricted to 7% of $30,000	2,100
	2,440
CPF — no restriction	2,980
Insurance premium — restriction	2,020
Maximum relief available	5,000

¶12-270 Relief for employees' CPF and other similar contributions

All employees in Singapore who are Singapore citizens or Singapore permanent residents are required under the *Central Provident Fund Act (Cap 36, 2013 Revised Ed)* (the "CPF Act") to contribute to the CPF. The CPF is a nationwide comprehensive compulsory savings plan.

Some employers have set up their own pension or provident funds as savings plans for their employees. Some of these funds are approved funds for Singapore income tax purposes.

An individual resident in Singapore can claim deduction for any obligatory contributions made as an employee to any approved pension or provident fund (s 39(2)(g)) subject to the amount of statutory contributions provided for under the CPF Act.

Contributions could be made obligatory by reason of the contract of employment or by the rules or the constitution of the fund (s 39(2)(g)(iii)). There is an exception to this rule. Where, under the terms of the employment contract, an employee who holds a professional visit pass, an employment pass or a work permit makes obligatory contributions to his CPF account, such contributions do not qualify for relief (s 39(2)(g)(vii)). This is because the foreign employee is not required under the CPF Act to make any CPF contributions.

Contributions made by an employee to any unapproved pension or provident fund in Singapore or to any overseas pension or provident fund do not qualify for deduction.

Where an individual contributes to another approved fund in addition to contributing to the CPF or a designated pension or provident fund, such contributions to the former fund are not deductible (s 39(9)).

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Where the obligatory contributions to any approved pension or provident fund exceed $5,000, no deduction could be claimed for any payment of life insurance premiums (s 39(2)(g)(ii)).

Example 6

In Example 5, assume Crystal's statutory CPF contribution was $10,500. She can claim relief of $10,500 for her CPF contributions but not her life assurance premium payments.

Contributions to the CPF

Under the CPF Act, employees are required to make statutory contributions of a stipulated amount on their ordinary wages and additional wages. These statutory contributions are allowed as a relief under s 39(2)(g). Any contributions in excess of the statutory amounts do not qualify for relief. The maximum amount of wages subject to CPF contributions is calculated based on the equivalent of 17 months of the ordinary wages ceiling of $5,000.

Ordinary wages comprise an employee's basic wage for the month, plus any overtime pay, commission, allowances or piecework bonuses earned in that month. *Additional wages* refer to annual bonuses, annual commissions, annual wage supplements and other such payments that are paid at intervals of more than a month. An employee's *total wages* for any calendar month comprise his ordinary wages for that month and any additional wages paid in that month.

Table 1 in Chapter 5 (at ¶5-240ff) shows both the employer's and the employee's CPF contribution rates for employees aged up to 55 years. For purposes of discussion in the following paragraphs, all illustrations will be made with reference to an employee aged below 50 years. From 1 July 2007, the CPF contribution rate on both ordinary and additional wages for an employee aged below 50 years is 20%. The ceiling for the monthly ordinary wages subject to CPF contributions is $5,000. From 2012, with a ceiling of $5,000 for the monthly ordinary wages, the maximum monthly CPF contributions on ordinary wages by an employee would be $1,000 and the maximum income tax deduction for CPF contributions on ordinary wages $12,000.

An employee can also deduct his statutory CPF contributions on *additional wages*. CPF is payable on the lower of the actual additional wages or the additional wages ceiling. The additional wage ceiling for an employee is the difference between the maximum wages subject to CPF and the total ordinary wages subject to CPF for that year. From 2012, the maximum wages subject to CPF will be $85,000 (equivalent to 17 × $5,000) and the additional wage ceiling is limited to $25,000, being the difference between the maximum wages subject to CPF (ie $85,000) and the total ordinary wages subject to CPF for that year (ie $60,000).

Note that an employee cannot claim deduction for any contributions made to his CPF, designated pension or provident fund on the part of additional wages that exceeds $25,000.

This restriction, however, does not apply in the following two situations (s 39(6) and 39(8)) from YA 2012:

(a) *where an employee's total wages do not exceed $85,000 and ordinary wages do not exceed $60,000*

CPF will be payable on the full additional wages even if the additional wage ceiling exceeds $25,000. Tax deductions would be allowed for all CPF contributions on ordinary and additional wages, and

(b) *where an employee's total wages exceed $85,000 but ordinary wages do not exceed $60,000*

The additional wages subject to CPF will be the difference between $85,000 and the total ordinary wages, and this amount may be greater than $25,000. As the CPF laws require contributions to be made on total wages up to $85,000, tax deductions will therefore be allowed for all CPF statutory contributions on such wages.

Key: AW = Annual additional wages
OW = Annual ordinary wages
TW = Total wages (OW + AW)

The rules on the amount of AW subject to CPF contributions from 2012 are summarised below (assuming that OW in each month does not exceed the monthly compulsory contribution limit):

(a) Where TW ≤ $85,000 and OW ≤ $60,000	(a) Actual AW
(b) Where TW ≤ $85,000 and OW > $60,000	(b) TW – OW
(c) Where TW > $85,000 and OW ≤ $60,000	(c) $85,000 – OW
(d) Where TW > $85,000 and OW > $60,000	(d) $25,000

Example 7

This example illustrates the amount of CPF contributions to be made in 2015 by an employee on OW and AW for taxpayers A, B and C (all below 50 years). The example assumes that OW was evenly distributed in each month of the year and that AW was paid in December.

	A	B	C
Category	TW ≤ $85,000	TW > $85,000 OW ≤ $60,000	TW > $85,000 OW > $60,000
Total wages for the year			
OW	$40,000	$40,000	$63,000
AW	$30,000	$55,000	$62,000
Total Wages	$70,000	$95,000	$125,000
Wages subject to CPF			
OW	$40,000	$40,000	$60,000
AW	$30,000	$45,000	$25,000
Total	$70,000	$85,000	$ 85,000

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	A	B	C
CPF contributions by employee on [Note 2]			
OW	$8,000	$8,000	$12,000
AW	$6,000	$9,000	$5,000
Total	$14,000	$17,000	$17,000

Notes:

(1) The 2015 CPF contribution rate for employees is 20%.

(2) The employee's statutory CPF contributions on OW and AW will qualify for deduction (s 39(2)(g) and 39(6)).

With effect from 1 January 2015, the employer's CPF contribution rate for employees aged 50 years and below or above 65 years is increased by 1%. The increase is allocated to the employee's Medisave account. For employees above 50 to 55 years or above 55 years to 65 years, the employer's CPF contribution rate is increased by 2% and 1.5% respectively. The increase is allocated to the Medisave and Special Accounts.

2015 Budget announcement

As announced in the 2015 Budget, the following changes will be made to CPF contributions:

(a) the CPF monthly salary ceiling will be raised from $5,000 to $6,000 with effect from 1 January 2016, and

(b) the CPF contribution rates for older workers aged 50 to 65 years will be increased with effect from 1 January 2016.

Table 1: Increase in CPF contribution rates for older workers

Employee age (years)	Increase in contribution rates (% of wage)		
	Contribution by employer (allocated to Special Account)	Contribution by employee (allocated to Ordinary Account)	Total
Above 50 to 55	+1	+1	+2
Above 55 to 60	+1	-	+1
Above 60 to 65	+0.5	-	+0.5

The existing limits on tax deduction for employers' statutory CPF contributions and tax relief for employees' CPF contributions will be raised accordingly.

Contribution on overseas wages

An individual resident in Singapore who works overseas cannot claim deduction for any voluntary CPF contributions made in respect of his overseas wages or overseas additional wages (s 39(10)).

An employee's *overseas total wages* consist of the total of the employee's overseas ordinary wages and overseas additional wages received in any year. *Overseas ordinary wages* are the ordinary wages paid for the performance of duties outside Singapore. *Overseas additional wages* are additional wages paid for the performance of duties outside Singapore.

Example 8

A taxpayer earned OW of $70,000 and AW of $40,000 in the performance of duties overseas in 2014. He will not be entitled to any relief for voluntary CPF contributions made in respect of his overseas wage for YA 2015.

Foreign employees' CPF contribution

Foreign employees working in Singapore on a professional visit pass, an employment pass or a work permit are not required to contribute to the CPF. Any voluntary CPF contributions made by such foreigners do not qualify for tax deduction (s 39(2)(g)(vii)).

Similarly, any voluntary CPF contributions made by the employer are deemed to be the employee's taxable income (s 10C). The employer's CPF contribution would not be tax-deductible for the employer (s 14(1)(e)).

¶12-275 Relief for CPF contributions by self-employed

Self-employed individuals who are Singapore citizens or permanent residents are required under the CPF Act to contribute to their Medisave accounts if their yearly net trade income is more than $6,000. The net trade income is the balance of the gross trade income after deducting all allowable business expenses, capital allowances and business losses.

The statutory Medisave contribution rate will depend on the age and the net trade income of the self-employed and is subject to a specified maximum amount. A lower rate of contribution will apply to the self-employed with a lower net trade income. The statutory Medisave contributions, subject to a specified maximum amount, for individuals of different age groups with a net trade income of more than $18,000 are given below:

Age group	Medisave contributions	
	% of s 10(1)(a) assessable income	subject to a maximum of
For net trade income earned in 2014:		
Below 35 years	7%	$4,200
35 to below 45 years	8%	$4,800
45 to below 50 years	9%	$5,400
50 years and above	9.5%	$5,700

Self-employed individuals are also encouraged to voluntarily contribute additional amounts into their CPF accounts, for which they are allowed a deduction. With these CPF contributions, they would effectively enjoy tax benefits similar to an employee.

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The amount of relief a self-employed individual can claim for his voluntary CPF contributions for YA 2015 is the *lower* of the following three amounts (s 39(2)(h)):

(a) actual statutory and voluntary contributions to the self-employed individual's CPF account made during the year 2014

(b) an amount equal to 36% of the self-employed individual's s 10(1)(a) assessable income for that YA, and

(c) a specified limit which is 36% × monthly ordinary wages ceiling × specified number of months.

As the CPF contributions cap is based on the 17 months' contributions, the limit for contributions made in the year 2014 is $30,600 (36% × $5,000 × 17 months).

The proviso to s 39(2)(h) governs the amount of relief a self-employed individual can claim where he has also made statutory CPF contributions as an employee and has paid premiums for life assurance policies.

For YA 2015, the maximum relief a self-employed individual can claim for statutory CPF contributions made as an employee, statutory Medisave CPF contributions and voluntary CPF contributions made as a self-employed individual, and life insurance premiums paid in the year 2014 is as follows:

	Maximum relief
If $c + m + v \leq \$5{,}000$ and $p + c + v + m > \$5{,}000$	$5,000
If $c + m + v \geq \$5{,}000$ but $\leq \$30{,}600$	$c + m + v$
If $c + m + v \geq \$30{,}600$ but $c + m \leq \$30{,}600$	$30,600
If $c + m + v \geq \$30{,}600$ and $c + m \geq \$30{,}600$	$c + m$

where c = amount of employee's statutory CPF contributions

m = amount of self-employed individual's statutory Medisave contributions

v = amount of self-employed individual's voluntary CPF contribution

p = lower of annual life insurance premium paid and 7% of capital sum assured

From 2015

With effect from 1 January 2015, the CPF Medisave contribution rate for a self-employed person with annual net trade income of $18,000 and above is increased by 1%. The statutory Medisave contributions, subject to a specified maximum amount, for individuals of different age groups with a net trade income of more than $18,000 are given below:

Age group	*Medisave contributions*	
	s% of s 10(1)(a) assessable income	*subject to a maximum of*
For net trade income earned in 2015:		
Below 35 years	8	$4,800
35 to below 45 years	9%	$5,400
45 to below 50 years	10%	$6,000
50 years and above	10.5%	$6,400

The amount of relief a self-employed individual can claim for his voluntary CPF contributions for YA 2016 is the *lower* of the following three amounts (s 39(2)(h)):

(a) actual statutory and voluntary contributions to the self-employed individual's CPF account made during the year 2015

(b) an amount equal to 37% of the self-employed individual's s 10(1)(a) assessable income for that YA, and

(c) a specified limit which is 37% × monthly ordinary wages ceiling × specified number of months.

As the CPF contributions cap is based on the 17 months' contributions, the limit for contributions made in the year 2015 is \$31,450 (37% × \$5,000 × 17 months).

The proviso to s 39(2)(h) governs the amount of relief a self-employed individual can claim where he has also made statutory CPF contributions as an employee and has paid premiums for life assurance policies.
For YA 2016, the maximum relief a self-employed individual can claim for statutory CPF contributions made as an employee, statutory Medisave CPF contributions and voluntary CPF contributions made as a self-employed individual, and life insurance premiums paid in the year 2015 is as follows:

	Maximum relief
If c + m + v ≤ \$5,000 and p + c + v + m > \$5,000	\$5,000
If c + m + v ≥ \$5,000 but ≤ \$31,450	c + m + v
If c + m + v ≥ \$31,450 but c + m ≤ \$31,450	\$31,450
If c + m + v ≥ \$31,450 and c + m ≥ \$31,450	c + m

where c = amount of employee's statutory CPF contributions
m = amount of self-employed individual's statutory Medisave contributions
v = amount of self-employed individual's voluntary CPF contribution
p = lower of annual life insurance premium paid and 7% of capital sum assured

For YA 2016, the maximum relief a self-employed individual can claim for statutory CPF contributions made as an employee, statutory Medisave CPF contributions and voluntary CPF contributions made as a self-employed individual, and life insurance premiums paid in the year 2015 shall be the lesser of 37% of the assessable income derived from such TBP or vocation or \$31,450.

2015 Budget annoucement

As announced in the 2015 Budget, the CPF monthly salary ceiling will be raised from \$5,000 to \$6,000 with effect from 1 January 2016. Accordingly, the maximum relief a self-employed individual may claim will be raised from \$31,450 for YA 2016 to \$37,740 from YA 2017.

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¶12-280 Relief for CPF cash top-up to relatives' retirement accounts

From YA 2009, a citizen or permanent resident who is a resident in Singapore and who tops up his non-working spouse's, sibling's, parent's or grandparent's retirement account or special account with cash is allowed a relief of the amount contributed subject to a maximum of $7,000 per year (s 39(3) and 39(4)).

The non-working spouse and the sibling must be at least 55 years old and, from YA 2011, earn not more than $4,000 ($2,000 up to YA 2010) in the year preceding the year of the top-up. There is no income threshold for a handicapped spouse, sibling, parent or grandparent.

¶12-280A Relief for voluntary CPF contributions to own retirement account

From YA 2009, Singapore citizens and permanent residents, who are tax residents in Singapore, can claim tax relief of up to $7,000 per year for contributions by themselves or their employers to their own CPF retirement accounts or special accounts in accordance with s 18 of the CPF Act (s 39(3A)). The contributions by the employers are fully taxable in the hands of the individuals (s 10C(1)).

¶12-281 Relief for voluntary contributions to Medisave

From YA 2009, individuals who are tax residents in Singapore can claim tax relief for their voluntary contributions (excluding any amount made by self-employed individuals) to their own Medisave accounts (s 39(2)(q)). These contributions are capped at the prevailing Medisave contribution ceiling, $31,450 for YA 2016 ($30,600 from YA 2012), less any mandatory contributions to Medisave (see ¶12-275).

¶12-285 Relief for SRS contributions

This section deals with the relief for contributions made by an individual resident in Singapore to the SRS, a voluntary scheme to complement the CPF scheme. The taxability of withdrawals from the SRS is discussed in ¶6-910.

Singapore citizens, permanent residents and foreigners who are at least 21 years of age can open an SRS account with an authorised operator, namely Development Bank of Singapore (DBS), Oversea-Chinese Banking Corporation (OCBC) and United Overseas Bank (UOB). Individuals who are undischarged bankrupts or who are of unsound mind are not eligible for the scheme. No further contributions can be made once the member makes the first penalty-free withdrawal.

Contributions to the SRS accounts are on a voluntary basis and can be made directly by the individual or by the employer. Contributors need not make contributions on a regular basis. The contributions can then be used to purchase a variety of investment instruments.

The SRS contribution rate is 15% for Singapore citizens and permanent residents, and 35% for foreigners.

From 2011, the income base for SRS contributions is $85,000 which is based on 17 months of CPF salary ceiling of $5,000. The maximum SRS contributions by an individual or the employer on behalf of the employee is as follows:

- for Singaporeans and permanent residents — $12,750 (15% × $85,000), and
- for foreigners — $29,750 (35% × $85,000).

Where SRS contributions are made by an employer, the contributions are taxable in the employee's hands.

Only a contributor who is a tax resident in Singapore can claim relief for his contributions made in the preceding calendar year. For example, SRS contributions made in 2014 would qualify for tax relief in YA 2015.

The SRS contributions made by an individual will not qualify for deduction if (s 39(2)(o)):

(a) the SRS account is suspended as at 31 December of the year immediately preceding the YA, or

(b) the amount of such contribution is withdrawn from the SRS account during the year immediately preceding the YA.

2015 Budget annoucement

As announced in the 2015 Budget, the CPF monthly salary ceiling will be raised from $5,000 to $6,000 with effect from 1 January 2016. Consequently, the annual contribution cap to the SRS will be raised in line with the increase in the CPF salary ceiling as follows:

- for Singaporeans and permanent residents — $15,300 (15% × $102,000), and
- for foreigners — $35,700 (35% × $102,000).

¶12-290 Relief for course fees

Resident individuals are allowed relief for course fees incurred on qualifying courses, seminars and conferences. The relief is granted to encourage individuals to continuously upgrade themselves. Allowable fees include registration or enrolment fees, tuition fees, examination fees and aptitude test fees (for computer courses). Deduction cannot be claimed for textbooks, travelling and living expenses.

Relief can be claimed for the qualifying course fees incurred for the following:

(a) any course of study, seminar or conference for the purpose of gaining an approved academic, professional or vocational qualification, or any approved course, seminar or conference that is related to the taxpayer's TBP, vocation or employment (s 39(2)(k))

(b) any course of study, seminar or conference (qualifying course) that is not related to the taxpayer's TBP, vocation or employment at the time they were taken but are now relevant due to a career change (s 39(12)), and/or

(c) any course of study completed on or after 1 January 2008 or any seminar or conference attended on or after 1 January 2008 that leads to an approved academic, professional or vocational qualification (s 39(12A)).

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For (b), the claim for the fees incurred must be made within two years of the completion of the course.

For (c), the claim for the fees incurred in any year can be deferred to the earlier of the following:

- the first YA where the taxpayer's assessable income exceeds $22,000, or
- the second subsequent YA from the YA relating to the year in which the course was completed or the year in which the seminar or conference was attended.

The maximum course fee relief claimable for YA 2011 and subsequent years under s 39(2)(k), 39(12) and 39(12A) is limited to $5,500 ($3,500 up to YA 2010) (s 39(12B)).

The IRAS website (www.iras.gov.sg) has useful illustrations on when and how the course fees can be claimed.

¶12-295 Relief for foreign maid levy

This relief is given to a resident woman who is (s 39(11)):

(a) living with her husband

(b) married and her husband is not resident in Singapore, or

(c) separated from her husband, divorced or widowed and has an unmarried child or children living with her in the same household in Singapore in the year preceding the YA for whom she can claim child relief.

The amount of foreign maid levy relief is equal to twice the annual foreign worker levy paid in respect of one foreign maid employed by her or her husband. This amount can only be deducted against the woman's earned income.

From YA 2009, the non-concessionary monthly foreign maid levy is $265. The maximum relief for YA 2015 is $6,360 ($265 × 12 × 2).

If the Ministry of Manpower approves an application for foreign domestic worker concessionary levy, the relief for foreign maid levy will be computed based on the lower amount of levy.

As announced in the 2015 Budget, the foreign domestic worker concessionary levy will be reduced from $120 per month to $60 per month with effect from 1 May 2015. The condition of the concessionary levy that children in the households have to be below the age of 12 will also be relaxed, households with children below the age of 16 will qualify for the concessionary levy. The concessionary levy also applies to households with elderly family members aged 65 years and above.

If the foreign domestic worker concessionary levy is granted to a resident woman in YA 2015, the relief for foreign maid levy in YA 2016 will be $1,920 ($120 per month for four months + $60 per month for eight months × 2).

Example 9

Mrs Patricia Chan's salary for 2014 was $60,000. She has two children aged five and nine years. She paid total levy of $3,180 for a Filipino maid in 2014. Assuming her husband does not claim any child relief, her chargeable income for YA 2015 will be:

	$	$
Employment income		60,000
Less: Relief under s 39		
Earned income	1,000	
Children (QCR and WMCR)		
– 1st child ($4,000 + $60,000 × 15%)	13,000	
– 2nd child ($4,000 + $60,000 × 20%)	16,000	
Foreign maid levy ($3,180 × 2)	6,360	
CPF	10,800	47,160
Chargeable income		12,840

TAX REBATES

¶12-310 Parenthood rebates

A procreation incentive in the form of a tax rebate was first introduced in YA 1988 to encourage married couples to have a third child. Tax rebates were subsequently introduced for a fourth child (YA 1989) and a second child (YA 1991). From YA 2005, the tax rebate can also be claimed for a legally adopted second, third and fourth child.

From YA 2009, the parenthood tax rebate was provided for a qualifying first, fifth or subsequent child who is a Singapore citizen born or legally adopted on or after 1 January 2008. The parenthood tax rebate given under s 42A is to be set off against the individual's tax liability.

Where an individual resident in Singapore while he is married, divorced or widowed has a legitimate child born to him or has a child legally adopted by him, the individual is entitled to claim the following parenthood tax rebates in the YA following the year of birth or adoption of that child (s 42A(1), 42A(2), 42A(2A) and 42A(2B)):

	From YA 2009
1st child*	$5,000
2nd child**	$10,000
3rd and 4th child**	$20,000
5th and subsequent child*	$20,000

* born during the basis year or legally adopted on or after 1 January 2008

** born during the basis year or legally adopted on or after 1 January 2004

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The following conditions have to be satisfied before rebates are given (s 42A(11)):

(a) the child must be a Singapore citizen at the time of birth or adoption or within 12 months thereafter, and

(b) the child's siblings must be members of the same household.

The parenthood rebate cannot be claimed in respect of a child who is adopted by an individual before the individual is married (s 42A(10A)).

Where more than one parent is entitled to claim the above rebate in respect of an eligible child, the rebate will be apportioned between the parents in such proportion as they may agree, or in the absence of such agreement, in such manner as appears to the Comptroller to be reasonable (s 42A(2C)).

Where the rebates granted exceed the parents' tax liabilities, any unabsorbed rebates can be carried forward to set off the parents' tax liabilities for subsequent years (s 42A(3)). There is no time limit for the carry-forward of the rebates.

Where an eligible child is subsequently given up for adoption to another person, the rebate or the balance of the unabsorbed rebate will not be available for deduction against his natural parents' tax payable for any YA following the year of adoption (s 42A(4)).

Example 10

The salaries of Mr and Mrs Kong for the year ended 31 December 2014 were $80,000 and $50,000 respectively. Their statutory CPF contributions in 2014 were $10,800 for Mr Kong and $10,000 for Mrs Kong. They have three children below 12 years old. The third child born on 8 August 2011 qualifies for the third child parenthood rebate. Their tax liabilities for YA 2015 would be as follows:

			Mr Kong		Mrs Kong	
			$	$	$	$
Income				80,000		50,000
Less:	s 39 reliefs					
	Earned income		1,000		1,000	
	Child:	1st	4,000		7,500	
		2nd	4,000		10,000	
		3rd	4,000		12,500	
	CPF		10,800	23,800	10,000	41,000
Chargeable income				56,200		9,000

		Mr Kong	Mrs Kong
		$	$
Tax payable before tax rebate		1,684	Nil
Less:	Parenthood tax rebate	20,000	
Tax payable for YA 2014		Nil	Nil
Unutilised parenthood tax rebate to be carried forward to YA 2015		18,316	

The unutilised tax rebate of $18,316 can be carried forward and set off against Mr and/or Mrs Kong's future tax liabilities until the rebate is fully utilised.

¶12-320 Tax rebate for resident individuals

A one-off tax rebate was granted to resident individuals for YA 2013 as follows:

(a) below 60 years of age as at 31 December 2012, 30% rebate capped at $1,500

(b) 60 years and above as at 31 December 2012, 50% rebate capped at $1,500.

No tax rebate was granted to resident individuals for YA 2014.

A one-off tax rebate of 50% capped at $1,000 is granted to resident individuals for YA 2015.

¶12-400 Selected reliefs/rebates for YA 2013, YA 2014 and YA 2015

Reliefs under s 39

Earned income relief	
• Below 55 years old (default)	$1,000
– For handicapped	$4,000 ($2,000 up to YA 2012)
• 55–59 years old (default)	$6,000 ($3,000 up to YA 2012)
– For handicapped	$10,000 ($5,000 up to YA 2012)
• 60 years and above (default)	$8,000 ($4,000 up to YA 2012)
– For handicapped	$12,000 ($6,000 up to YA 2012)
Spouse relief	$2,000
Handicapped spouse relief	$5,500 (max $3,500 up to YA 2014)
Parent, grandparent relief	$5,500 or $9,000 ($4,500 or $7,000 up to YA 2014)
Handicapped parent, grandparent relief	$10,000 or $14,000 ($8,000 or $11,000 up to YA 2014)
Grandparent caregiver	$3,000
Handicapped sibling relief	$5,500 ($3,500 up to YA 2014)
NSman relief:	
• For active NSman	$3,000
• For inactive NSman	$1,500
• For parent/wife	$750
Relief for NS key command and staff appointment holder	
• For those in active service	$5,000
• For those not in active service	$3,500
Children relief:	
• Normal child relief	$4,000 per child
• Handicapped child relief	$7,500 ($5,500 up to YA 2014)
• Working mother's child relief claimable by wife only for eligible child:	
– 1st child	15%
– 2nd child	20%
– 3rd and subsequent child	25%
% = % of mother's earned income	
Maximum relief per child	$50,000

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Parenthood rebates under s 42A

Claimable by one or both parents for each eligible child:

1st child	$5,000
2nd child	$10,000
3rd and subsequent child	$20,000

¶12-500 Individual tax rates

Rates applicable to resident individuals from YA 2007 to YA 2011

Chargeable income	$		*Rate* %	*Gross tax payable* $
On the first	20,000	@	0	0
On the next	10,000	@	3.5	350
On the first	30,000			350
On the next	10,000	@	5.5	550
On the first	40,000			900
On the next	40,000	@	8.5	3,400
On the first	80,000			4,300
On the next	80,000	@	14	11,200
On the first	160,000			15,500
On the next	160,000	@	17	27,200
On the first	320,000			42,700
Above	320,000	@	20	

A one-off tax rebate of 20%, capped at $2,000, was granted to resident individuals for YA 2011. There was no personal tax rebate for YA 2010.

Rates applicable to resident individuals from YA 2012 to YA 2016

Chargeable income	$		*Rate* %	*Gross tax payable* $
On the first	20,000		0	0
On the next	10,000	@	2	200
On the first	30,000			200
On the next	10,000	@	3.5	350
On the first	40,000			550
On the next	40,000	@	7	2,800
On the first	80,000			3,350
On the next	40,000	@	11.5	4,600
On the first	120,000			7,950
On the next	40,000	@	15	6,000
On the first	160,000			13,950
On the next	40,000	@	17	6,800
On the first	200,000			20,750

Chargeable income			Rate	Gross tax payable
	$		%	$
On the next	120,000	@	18	21,600
On the first	320,000			42,350
Income above	320,000	@	20	

There was no personal tax rebate for YA 2012.

A one-off tax rebate was granted to resident individuals for YA 2013 as follows:

(a) below 60 years of age as at 31 December 2012, 30% rebate capped at $1,500

(b) 60 years and above as at 31 December 2012, 50% rebate capped at $1,500.

There was no personal tax rebate for YA 2014.

A one-off tax rebate of 50% capped at $1,000 is granted to resident individuals for YA 2015.

A new tax rate structure for resident individuals applies from YA 2017.

Rates applicable to resident individuals from YA 2017

Chargeable income			Rate	Gross tax payable
	$		%	$
On the first	20,000		0	0
On the next	10,000	@	2	200
On the first	30,000			200
On the next	10,000	@	3.5	350
On the first	40,000			550
On the next	40,000	@	7	2,800
On the first	80,000			3,350
On the next	40,000	@	11.5	4,600
On the first	120,000			7,950
On the next	40,000	@	15	6,000
On the first	160,000			13,950
On the next	40,000	@	18	7,200
On the first	200,000			21,150
On the next	40,000	@	19	7,600
On the first	240,000			28,750
On the next	40,000	@	19.5	7,800
On the first	280,000			36,550
On the next	40,000	@	20	8,000
On the first	320,000			44,550
Income above	320,000	@	22	

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CHAPTER 13

TAXATION OF NON-RESIDENTS

TAXATION OF NON-RESIDENT INDIVIDUALS

¶13-100 Taxation of non-resident individuals

Non-resident individuals are subject to tax on all Singapore-sourced income unless the income is exempt from tax, such as interest income from a deposit in an approved bank in Singapore (s 13(1)(t)). Foreign income received in Singapore by a non-resident individual is exempt from tax (s 13(7A)(a)).

A non-resident individual is subject to tax on Singapore-sourced income at 20% (from the year of assessment (YA) 2008) except the following, among others:

- Singapore employment income is assessed at a flat rate of 15% or at the applicable resident rates whichever results in a higher tax liability (s 40B)
- certain income deemed to be Singapore-sourced under s 12(6) or 12(7) (eg royalties, interest, know-how payments and rent from movable property) is subject to withholding tax at either 15% or 10% (as the case may be); the tax is a final tax (conditions apply) (s 43(3) and 43(3A))
- gains from the disposal of any real property assessable under s 10(1)(a) of a non-resident real property trader are subject to withholding tax of 15% (s 45D(1))
- income derived from Singapore as a non-resident professional is subject to withholding tax at 15% (final tax) unless an election is made (in which case, a 20% tax rate on a non-final basis applies) (s 43(4), 43(5) and 45F), and
- income derived from Singapore as a non-resident public entertainer (from 22 February 2010 to 31 March 2020) is subject to withholding tax at 10% (final tax) (s 45GA).

Only resident individuals are entitled to personal reliefs under s 39 (see Chapter 12 at ¶12-100ff). Certain other reliefs are, however, available to non-resident individuals, eg s 40, 40A, 40B, 40C and 40D reliefs (see ¶13-110 to ¶13-150).

¶13-110 Relief for non-resident Singapore citizens and others

Up to YA 2015, **s 40 relief** is available to the following taxpayers with qualifying income:

Section	*Eligible taxpayer*	*Income qualifying for relief*
40(1)	Non-resident citizens of Singapore	All Singapore-sourced income taxable at 20%
40(3)	Non-resident non-Singapore citizens deriving pension income from Singapore	Singapore pension income
40(4)	Non-resident non-Singapore citizen who is resident in a treaty country which provides similar relief to a resident of Singapore (the Netherlands treaty (Art 23(2)).	All Singapore-sourced income taxable at 20%

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The effect of s 40(1) and 40(4) reliefs on a qualifying non-resident individual is to reduce the tax payable on Singapore income to a proportionate basis as follows:

$$\frac{\text{Singapore income (Si)}}{\text{Worldwide income (Wi)}} \times \text{Singapore tax payable on worldwide income (T)}$$

The worldwide income includes all foreign income (whether remitted or not). Singapore income subject to 20% tax and Singapore employment income subject to 15% tax under s 40B. Singapore income that is subject to a final tax rate of 15% or 10% under s 43(3), 43(3A) and 43(4)(a) is not eligible for the relief (s 40(5)). Such income and any other income exempt in Singapore are excluded from worldwide income when calculating the s 40(1) relief. In calculating the Singapore tax on worldwide income, the non-resident would be treated as if he was resident in Singapore. The non-resident can claim personal reliefs under s 39 except for course fees (s 40(1)). The chargeable income would be subject to the tax rates in Pt C of the Second Schedule to the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act").

Example 1

Albert, a Singapore citizen who is resident in Malaysia, owns a flat in Singapore. During the year 2014, he derived net rental income of $5,000 and his worldwide income excluding Singapore income was $35,000. His Singapore tax liability for YA 2015 will be computed as follows:

	$
Rental income	5,000
Tax @ 20%	1,000
Less: Relief under s 40(1)	(456)
Net tax payable	544

The relief under s 40(1) is calculated as follows:

	$
Net rental derived from Singapore (Si)	5,000
Income derived from outside Singapore	35,000
Assessable income (Wi)	40,000
Less: Personal reliefs (assumed)	(8,500)
Chargeable income	31,500
Net tax thereon (Second Schedule, Pt C rates)	4,350

Proportionate tax payable on Singapore income would be:

$$\frac{\text{Si (\$5,000)} \times \text{T (\$4,350)}}{\text{Wi (\$40,000)}} = 544$$

Relief under s 40(1) relief:

= tax payable at non-resident rate – proportionate tax payable on Singapore income
= $1,000 – $544
= $456

Note that s 40(1) relief is given as the Singapore effective tax rate of 10.87% ($4,350/$40,000) is lower than the non-resident rate of 20%. If the effective tax rate exceeds 20%, the non-resident will be taxed at 20% on his Singapore rental income.

To simplify the personal income tax system, s 40 reliefs will no longer apply with effect from YA 2016 (s 40(7)).

¶13-120 Relief for non-resident public entertainers

Non-resident public entertainers are given **s 40A relief** whereby their Singapore income net of allowable deductions is subject to tax at a flat rate of 15% or 10% depending on when the income was earned. Other Singapore-sourced income is generally subject to a 20% tax rate. "Public entertainers" refer to stage, radio or television artistes, musicians and athletes or individuals exercising any profession, vocation or employment of a similar nature (s 40A(4)).

The s 40A relief does not apply to the following income of a non-resident public entertainer (s 40A(1)):

- any withdrawal from the non-resident's Supplementary Retirement Scheme (SRS) account deemed to be income subject to tax under s 10L, or
- income from the exercise of any other employment in Singapore.

Instead, the non-resident public entertainer can claim s 40D relief for the above income (see ¶13-150).

Gross income derived by a non-resident public entertainer from services performed in Singapore for the period from 22 February 2010 to 31 March 2020 is subject to a withholding tax of 10% (s 40A(2A), 45GA; IRAS e-Tax Guide "Tax on Gross Income Derived from Singapore by Non-Resident Public Entertainers — Clarification on Obligations to Local Payer to Withhold Tax", published on 15 June 2007). The reduction in tax rate (from 15%) to 10% for the initial five-year period to 31 March 2015 was aimed at helping local organisers attract high quality performances to Singapore, and it has been extended for another five years to 31 March 2020 (s 45GA(2A)).

Gross income refers to both monetary and non-monetary payments including all fees, allowances and any benefits-in-kind provided (eg *per diem* allowances, airfare, food and accommodation). As an administrative concession, the cost of airfare and accommodation (excluding value of food) provided for 60 days or less in any calendar year will not be taxable. If the public entertainer paid for these expenses on his own, the public entertainer is allowed to deduct these expenses from his taxable income.

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Example 2

Ms Young, a public entertainer, has a contract to perform in Singapore for 20 days in 2015 for a fee of $10,000. She is provided with hotel accommodation at $200 a day. Ms Young pays her own airfare of $1,000. Her tax liability for YA 2016 would be as follows:

	$
Fees	10,000
Hotel accommodation provided (not taxable by concession)	–
	10,000
Less: Airfare paid by the public entertainer (concession)	(1,000)
Taxable income	9,000
Withholding tax @ 10%	900

If the contract provides for Ms Young's Singapore income tax to be borne by the sponsor, Ms Young will be taxable on that benefit as it constitutes income in her hands. Her net-of-tax amount will be $9,000, and the calculations are as follows:

	$
Taxable income, as above	9,000
Add: Income tax borne by sponsor ($9,000 × 10/90)	1,000
Total taxable income	10,000
Withholding tax @ 10%	1,000

A public entertainer does not qualify for s 13(6) exemption merely because he is an employee by status and his visit to Singapore does not exceed 60 days in a calendar year (s 13(7)). The s 13(6) exemption would apply only if, as an additional condition, his visit was substantially supported from the public funds of the Government of a foreign country.

In practice, foreign actors coming to Singapore in connection with the shooting of scenes are normally not regarded as public entertainers for tax purposes. If such a foreign actor is an employee by status, the tax treatment set out in ¶13-130 below will apply.

¶13-130 Relief for non-resident employees

A non-resident employee is assessed to tax on income derived from the exercise of employment in Singapore at either a flat rate of 15%, or the resident rates applicable to him, whichever gives a higher tax liability (s 40B). The 15% tax is applied on employment income net of deductible expenses but without any deduction for personal reliefs. All other Singapore-sourced income is subject to 20% tax, unless it qualifies for a reduced tax rate or is exempt from tax (eg interest income from a fixed deposit with an approved bank).

A non-resident employee is an individual who has exercised an employment in Singapore for such period of time as not to qualify for the status of a resident and includes an individual who is in receipt of leave pay attributable to a period of employment in Singapore but excludes a company director. However, the current Inland Revenue Authority of Singapore (IRAS) practice is to extend the s 40B relief to a full-time working director.

In practice, therefore, s 40B relief typically applies to a non-resident individual who exercises an employment in Singapore for a period between 61 days and 182 days (inclusive) during the calendar year. The reason is that he would be exempt from tax on the Singapore employment income if he had exercised the employment as a short-term visiting employee in Singapore for 60 days or less, and he would have qualified to be a resident in Singapore if that period was 183 days or more. It is understood that the IRAS treats an individual as exercising a short-term visiting employment only if his employment in Singapore spans **at most two calendar years**. An expatriate who exercises employment in Singapore that begins on 15 November 2014 would therefore qualify for the 60-day exemption for YA 2015 if the employment ends on 14 July 2015, but not if it ends on 14 July 2016. If his stay (including employment) in Singapore is continuous and straddles 183 days or more over two calendar years, he may elect, by IRAS concession, to be taxed as a resident for the YAs concerned (see Chapter 2, ¶2-610).

The s 40B relief does not apply to the following income of non-resident employees (s 40B(1)):

- any withdrawal from the employee's SRS account deemed to be income subject to tax under s 10L, or
- income derived as a public entertainer.

Note that the above domestic tax treatment is subject to the tax treaties, if applicable. Where an individual is resident in a country with which Singapore has a tax treaty, it is possible that the treaty prevents the IRAS from taxing him on any part of his income derived from an employment exercised in Singapore, even though the employment may have been exercised in Singapore for more than 60 days during the calendar year (conditions apply).

Example 3

Michael is unmarried and a resident of the United States of America (USA), a non-treaty country. He worked in Singapore for five months in 2014. His Singapore employment income was $81,000. His tax liability for YA 2015 is as follows:

	$
15% flat rate basis	
Employment income	81,000
Tax @ 15%	12,150

	$
Resident basis	
Employment income	81,000
Less: Earned income relief (assumed)	(1,000)
Chargeable income	80,000
Tax liability (Second Schedule, Pt A rates)	3,350

As tax payable under the resident basis is lower, Michael's tax payable will be $12,150.

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¶13-140 Relief for non-resident SRS members

A non-resident SRS member is entitled to **s 40C relief** for the withdrawals he makes from his SRS account which are deemed to be income under s 10L. The effect of s 40C relief is that the amount of the non-resident's SRS withdrawals deemed income (the amount is 50%) is assessed at the higher of 15% flat rate or the applicable resident rates. In order to claim this relief, the non-resident has to file his income tax return.

In the case of a non-citizen non-resident SRS member, the amount of SRS withdrawals deemed income is subject to withholding tax of 20% (s 45E and s 45EA).

¶13-150 Relief for non-resident deriving income from activity as public entertainer and employee, etc

Relief under s 40D is available to a non-resident individual who derives income from two or more of the following sources (ie "relevant income"):

- income derived as a public entertainer which qualifies for s 40A relief
- Singapore employment income, and
- withdrawals from his SRS account.

The effect of **s 40D relief** is that the proportionate tax on each of these types of income is reduced to the 15% tax rate but the tax payable on Singapore employment income and the SRS withdrawals cannot be less than that payable by a resident individual under similar circumstances.

¶13-300 Deemed-source provisions

Section 12 deems the source of the following income to be in Singapore:

(a) gains or profits from trading operations partly carried on by a non-resident person in Singapore (s 12(1))

(b) profits of non-resident operators of ships and aircraft arising from the outward shipment of passengers, mail, livestock and goods from Singapore (s 12(2))

(c) profits of non-resident persons in the business of cable or wireless undertakings where such profits arise from the transmission of messages in Singapore (s 12(3)) (see ¶13-850)

(d) income from employment exercised in Singapore regardless of whether such income is received in Singapore (s 12(4)) (see Chapter 5 at ¶5-110ff)

(e) income from employment exercised outside Singapore on behalf of the Government (s 12(5))

(f) interest and other related payments (s 12(6)) (see ¶13-610)

(g) royalties, know-how and technical service fees, management fees and rental income of movable property (s 12(7)) (see ¶13-615 to ¶13-650), and

(h) commission or other payments of a junket promoter (s 12(8)).

Section 12 is not itself a charging provision; s 10(1) is (see Chapter 3 at ¶3-100ff). The deemed-source provisions remove the uncertainty of applying the source rules based on case principles. They do not deem the nature of the payments falling within their ambit as income. The significance of a payment of income being deemed-sourced in Singapore is that the IRAS would then have the right to tax it under the first limb of the charging provision s 10(1) (see Chapter 3, ¶3-100).

Subject to some conditions found in the Press Statement issued by the Ministry of Finance on 21 December 1977, certain kinds of income are treated as not deemed to be derived from Singapore under s 12(6) and 12(7).

The 1977 Press Statement was codified and expanded on in s 12(6A) and 12(7A). As these provisions took effect from 29 December 2009 (see further ¶13-610, ¶13-630 and ¶13-640), the Press Statement no longer applies. For completeness, however, it is reproduced below:

Ministry of Finance, 1977 Press Statement

"The *Income Tax Amendment Act 1977* which came into effect on 7 July 1977 introduced certain provisions which have the effect of frustrating tax avoidance schemes in siphoning off Singapore profits, particularly between associated companies in Singapore and outside Singapore. However, some of these provisions have been given more than one possible interpretation, thus giving rise to doubt on the scope and amount of payment to non-residents subject to tax. For the purpose of clarification and ease of administration, where the following services are performed outside Singapore by persons outside Singapore for or on behalf of residents or permanent residents or permanent establishment in Singapore, or even between associated companies, and such transactions are at arm's length and not with intent of siphoning off Singapore income, the Commissioner of Inland Revenue has given the following rulings:

(a) Commission, fees or any other payments in connection with any arrangement, guarantee, management or service relating to any loan or indebtedness — s 12(6)(a) of the *Income Tax Act*.

Where the arrangement, management, guarantee or service is performed outside Singapore, the payments for such arrangement, guarantee, management or service are hereby treated as not covered by the provisions of s 12(6)(a).

(b) Any payment for rendering of assistance or service in connection with the application or use of scientific, technical, industrial or commercial knowledge or information — s 12(7)(b) of the *Income Tax Act*.

Where the assistance or service is performed outside Singapore, the payment for such assistance or service is hereby treated as not covered by the provisions of s 12(7)(b). This does not refer to royalty which has always been subject to tax even before the 1977 Income Tax Amendment.

(c) Any payment for the management or assistance in the management of any trade, business or profession — s 12(7)(c) of the *Income Tax Act*.

Reimbursement or allocation of administrative expenses incurred by Head Office outside Singapore and claimed by a branch in Singapore is governed by the provisions of s 14 as before. This also applies to reimbursement or allocation of expenses between associated companies. Both are not affected by the provisions of s 12(7)(c).

Payments to persons outside Singapore not associated to the payers in Singapore are hereby treated as not covered by the provisions of s 12(7)(c)."

Where income is deemed to be sourced in Singapore under s 12(6) (subject to s 12(6A)) and 12(7) (subject to s 12(7A)), the payer is required to withhold tax when making the payment (if non-exempt) to a non-resident person (s 45 and 45A).

¶13-400 Withholding tax system

Singapore has a withholding tax mechanism to ensure and facilitate the collection of tax payable from non-residents on some kinds of Singapore-sourced income. In general terms, the obligation to withhold tax applies to payments of certain income

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(see Table 1), which are either sourced or deemed to be sourced in Singapore. Subject to conditions, the applicable tax rates for each payment of income (in the absence of any tax treaty or tax incentive that grants a tax exemption or lower tax rate) are also indicated.

Withholding tax applies to the payments listed in the table unless:

(i) the payment of income is tax exempt (under a treaty or domestic tax incentive), or

(ii) the requirement to withhold has been waived.

Where the income is exempt, there is no tax liability on the income. As the withholding mechanism is only a method of collecting tax that is payable, withholding tax would not apply to exempt income.

Where the IRAS has granted a waiver of withholding tax, any Singapore tax that is payable on the income concerned will be collected by direct assessment. Under Singapore's preceding year basis of assessment (see Chapter 2 at ¶2-100ff), this means that the recipient of income derived in 2014 is required to report his income in the tax return for YA 2015.

Table 1: Payments of income subject to withholding tax in Singapore (with applicable tax rates and deemed-source provisions)

Deemed-source provisions	*Income*	*Tax rate*	*Withholding tax provisions*
s 12(6)	• interest, commissions, fees or any other payments relating to loans or indebtedness	15% (final)	s 45, 45A
s 12(7)(a)	• royalties or other lump sum payments for the use of or the right to use movable property	10% (final)	s 45A
s 12(7)(b) first limb	• know-how payments for the use of or the right to use scientific, technical, industrial or commercial knowledge or information	10% (final)	s 45A
s 12(7)(b) second limb	• fees for technical assistance or service in connection with the application or use of scientific, technical, industrial or commercial knowledge or information	17% (non-final) (20% for non-resident individuals)	s 45A
s 12(7)(c)	• fees for the management or assistance in the management of any trade, business or profession	17% (non-final) (20% for non-resident individuals)	s 45A
s 12(7)(d)	• rent or any payments for the use of movable property • directors' remuneration • specified distributions by unit trusts • gains from real property transactions under s 10(1)(a)	15% (final) 20% (non-final) 17% (20% for non-resident individuals) 15% (non-final)	s 45A s 45B s 45C s 45D

Deemed-source provisions	*Income*	*Tax rate*	*Withholding tax provisions*
	• withdrawals by non-citizen non-resident SRS members (see ¶13-130)	20% (non-final)	s 45E
	• income from profession or vocation carried on by a non-resident individual	15% (final) or, on election, 20% (non-final)	s 45F
	• distributions from any real estate investment trust (REIT)	10% (final)/17%/20% depending on the status of the recipient	s 45G
	• income derived by a public entertainer (see ¶13-120)	10% (for income derived from 22 February 2010 to 31 March 2020) (see ¶13-120)	s 45GA
s 12(8)	• commission or other payment paid to junket promoter	3%	s 45H

Notes:

In Table 1, the final tax rates for payments of income under s 12(6) and 12(7) apply only if the following conditions are satisfied:

(1) the payment concerned is not derived from any trade, business, profession or vocation carried on or exercised by the non-resident person in Singapore, and

(2) the payment is not effectively connected with any permanent establishment (PE) of the non-resident person in Singapore.

The final tax rates may also be lower than the 10% or 15% indicated (as the case may be), if provided by an applicable tax treaty.

Please note also that, with effect from 17 February 2012, certain persons are exempt from the requirement to withhold tax on payments of interest and other income under s 12(6) to non-resident persons under specified circumstances (s 45I). (See ¶13-610 for details.)

General withholding tax rules

Section 45 contains the withholding tax rules on interest. The provisions of s 45 apply similarly to other payments of income listed above by virtue of s 45A to 45H.

Where a payer is "liable to pay" any of the above income to another person "not known to him to be resident in Singapore", the payer is required to withhold tax at the applicable rate. The recipient therefore receives only the amount net of the withholding tax (see Example 4). Where tax has been withheld from payments made to a non-resident person, the IRAS must be notified immediately in writing of the deduction and the amount withheld must be paid to the IRAS within the specified period (s 45(1) and 45(4)). There are penalties for failure to withhold and for late payment of the tax withheld.

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Where the payment of income to a non-resident person is on or after 1 July 2012, the tax withheld must be paid to the IRAS by the 15th day of the second month following the date of payment to the non-resident.

(See s 45(4); IRAS e-Tax Guide "Changes to sec 45 Withholding Tax Regime", published on 14 March 2003.)

The Comptroller of Income Tax (the "Comptroller") has the discretion to:

(i) allow banks and financial institutions to give notice and make payment of withholding tax within such period as is acceptable to him, and

(ii) require any person to withhold and account for tax at a higher or lower tax rate (s 45(2)).

The IRAS has clarified that:

- For a payment of income subject to final withholding tax of 10% or 15%, the deduction of tax would be based on the gross amount of payment.
- Where the tax on the payment is not a final tax, the deduction of tax would be based on the gross amount of payment made to the non-resident. However, where written permission has been obtained from the IRAS before payment is made, the deduction of tax could be based on a lower tax rate or a lower amount of payment.
- Where there is a dispute with the Comptroller as to whether payment to a non-resident is subject to withholding tax, the payer is still obliged to withhold tax on the payment pending the resolution of the dispute. Otherwise, the payer will be held accountable for any tax due and will be liable for penalties if the tax is not paid within the prescribed period.

(See IRAS e-Tax Guide "Obligations of the Payer under Sections 45, 45A, 45B and 45D of the Income Tax Act", updated on 28 March 2005.)

Final tax versus non-final tax

At the outset, we have explained the terms "final tax" and "non-final tax" in Table 1.

Under the current tax rules:

(i) Tax that is subject to withholding at the normal corporate rate of 17% (20% for non-resident individuals) is **not a final tax**. This means that the non-resident recipient of the payment of income may file a tax return with the IRAS to claim deduction for expenses wholly and exclusively incurred in the production of the income and claim a refund of the tax overpaid.

    In practice, however, where the income falls under a non-s 10(1)(a) source, eg director's fees (s 10(1)(b) income), deductions for expenses are rarely claimed and allowed.

(ii) Tax that is subject to withholding at a tax rate at some other reduced tax rate such as 10% or 15% is a **final tax**. This means that the non-resident recipient of such income cannot file a tax return to claim deductions for expenses incurred (s 43(3), 43(3A) and 43(3B)).

    As an exception, proceeds derived by a non-resident real property trader from the sale of real property in Singapore are subject to withholding tax at 15% but this tax is non-final.

Withholding tax rates

Depending on the nature of the payment, the withholding tax rate applicable to a payment made to a non-resident could be:

(i) 10%, 15%, 17% or the rate specified under a tax treaty (for non-individuals)

(ii) 10%, 15%, 20% or a lower tax rate specified under a tax treaty (for individuals).

Table 1 shows that among the deemed-source provisions of s 12, only s 12(6) and 12(7) payments are subject to withholding tax in s 45 and 45A:

(1) 10% final withholding tax applies to the following:

- royalties or other payments in one lump sum or otherwise for the use of or the right to use any movable property, and
- payments for the use of or the right to use scientific, technical, industrial or commercial knowledge or information (ie know-how payments).

(2) 15% final withholding tax applies to the following:

- interest, commissions, fees and any other payments in connection with any loan or indebtedness or with any arrangement, management, guarantee or service relating to any loan or indebtedness, and
- rent or other payments for the use of any movable property.

For the above final withholding tax rates of 10% or 15% to apply, the income:

(i) must not be derived from any trade, business, profession or vocation carried on or exercised by the non-resident person in Singapore, and

(ii) must not be effectively connected with any PE of the non-resident person in Singapore (s 43(3)).

The withholding tax rate of 17% (non-final tax) (20% for non-resident individuals) would apply to the following payments made in the basis period ending in 2009 and subsequent years:

- technical assistance fees (show-how payments), and
- management fees.

Non-resident directors' remuneration is subject to withholding tax at 20% (s 45B).

Before the details on these and the other payments listed in Table 1 are explained further in this chapter, the following relevant aspects which pertain generally to s 12(6) and 12(7) are first set out in turn:

(a) Circumstances in which income is deemed to have been paid, for withholding tax purposes.

(b) General tax incentive under s 13(4) for s 12(6) and 12(7) payments.

(c) Tax consequences of breach of condition imposed under s 13(4) incentive (s 45AA).

Income deemed to have been paid

Withholding tax applies not only to actual payments of the income made to a non-resident person but also to payments deemed to have been made.

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A payment is deemed to have been made to a person if it is reinvested, accumulated, capitalised, carried to any reserve or credited to any account, or otherwise dealt with on behalf of that person (s 45(8)(b)). Thus, if a non-resident person instructs a Singapore resident company paying royalties to him to invest the amount in shares instead, the royalties will be deemed to have been paid to him even though he did not actually receive payment.

For withholding tax purposes, the **date of payment** is the earliest of the following dates (s 45(8)(b)):

(a) when the payment is due (based on the contract or agreement) ("liable to pay" in the language of s 45(1))

(b) the date of deemed payment, or

(c) the date of actual payment.

The IRAS has stated that:

- in the absence of a contract or an agreement, the date of invoice would be taken to be the date the payment is due, and
- in the case of director's fees, the date of payment is the date when the fees are voted and approved at the company's annual general meeting.

(See IRAS e-Tax Guide "Changes to sec 45 Withholding Tax Regime" published on 14 March 2003.)

Where the payment is made to a non-resident on or after 1 July 2012, the deadline for paying the tax withheld to the IRAS is the 15th day of the second month following the date of payment (if the date of payment was before 1 July 2012, the deadline would have been the 15th day of the month following that date).

Example 4

On 15 September 2014, Tristan Accessories Pte Ltd, a Singapore resident company, obtained a loan of $2m from its US parent company USCo. Under the loan agreement, the first payment of interest of $10,000 was due on 15 December 2014. Tristan made the actual payment only on 8 January 2015.

The US does not have a comprehensive tax treaty with Singapore. Assume no tax incentive applied to the payment of interest.

Solution:

The "date of payment" of the interest was 15 December 2014.

Tristan was required to withhold tax at 15% (final) on the interest, ie $1,500, and remit the amount of $1,500 to the IRAS by 15 February 2015.

USCo would have received only the balance (net of 15% withholding tax) of $8,500.

General tax incentive for s 12(6) and 12(7) payments

A tax treaty may provide for tax exemption or reduction on income such as interest and royalties, which falls within the scope of s 12(6) and 12(7) (for details, please refer to the table of Tax Treaties at the Appendix of the book at ¶22-000).

The following domestic tax provisions may also grant tax exemption or reduction for payments of income generally falling within s 12(6) and 12(7). For conciseness, they are set out here in the chapter. Recall that withholding tax does not apply to exempt income, and that the reduced rates of withholding tax will apply (instead of those listed in Table 1) where an applicable treaty or incentive exists.

- *Exemption of tax on s 12(6) and 12(7) payments*

  The Minister for Finance (the "Minister") has the power to grant full or partial exemption from tax on any payment of income under s 12(6) and 12(7), where he is of the opinion that the payment is made for a purpose which will promote or enhance the economic or technological development of Singapore (s 13(4)). Exemption from tax is notified in the *Gazette* on a case-by-case basis. The scope of payments falling within this incentive therefore consists of interest, commissions, fees and basically other service-related payments in connection with a loan or indebtedness, royalties, know-how payments, technical assistance fees, management fees, and rent for the use of movable property

  Where a person has breached any condition imposed by the Minister for granting the s 13(4) incentive, the amount of tax that ought otherwise to have been withheld by him from payments made by him to a non-resident person is deemed to have been withheld from those payments and is a debt due from him to the Government and recoverable from him (s 45AA(1)). This tax rule applies from 20 December 2011.

Example 4A

Section 13(4) tax exemption was granted on a payment of interest by a Singapore resident company, SingCo, to a non-resident lender, USCo, a person who is resident in a non-treaty country and has no business presence or other dealings in Singapore. SingCo had paid $100,000 interest to USCo without withholding any tax.

Assume, however, that not all the conditions for the tax exemption were complied with. Under s 45AA, the 15% final tax that ought to have been withheld and accounted for to the IRAS is deemed to have been deducted by SingCo from the payment of $100,000 and to be a debt due from SingCo to the Government.

The tax deemed deducted by SingCo	= $100,000/0.85 × 15%
	= $17,647.06

- *Approved royalties, fees and development contributions (EEIA)*

  Under this incentive, the Minister may grant tax exemption or reduction for approved "royalties, fees and development contributions" if it is expedient in the public interest to do so. Such income covered includes royalties and technical assistance fees under s 12(7) (s 64 of the *Economic Expansion Incentives (Relief from Income Tax) Act (Cap 86)* (EEIA)).

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Waiver of withholding tax

There is a general waiver of withholding tax on payments under s 12(6) made to the Singapore branch of a non-resident bank (see also ¶13-610). The information below pertains to non-bank companies only.

Position before 2014 Budget

The Singapore branch of a non-resident company, which is part of a substantial overseas group, can apply for a waiver of withholding tax for any of its income deemed to be sourced in Singapore under s 12(6) and 12(7) if the following conditions are satisfied:

(a) the branch is part of a substantial overseas group (as a guide, a group with turnover of at least US$50m per annum on a consolidated basis may be considered a substantial group)

(b) the branch has been carrying on business in Singapore for at least two years

(c) the branch has complied well with the taxation laws of Singapore

(d) the head office of the company undertakes to pay any tax which may be unpaid arising from the waiver

(e) the branch provides a schedule of the names of the persons from which income to be covered by the waiver will be received

(f) the branch undertakes to the Comptroller to:

  (i) report all payments on which withholding of tax would apply, if not for the waiver, as income in its accounts

  (ii) confirm that such income has been so reported when the tax computation is filed

  (iii) inform him should it subsequently fail to meet the condition in subpara (a)

  (iv) inform him of any impending decision to cease operations in Singapore, and

(g) any approval granted for the waiver will be reviewed annually and may be withdrawn upon the breach of any condition.

(See IRAS e-Tax Guide 1998/IT/4 "Application for Waiver of Withholding Tax on Payments to Singapore Branches of Non-Resident Companies which are not Banks", revised on 1 August 2008.)

Where the non-resident company cannot meet the above conditions for the indefinite waiver, it can still apply for a waiver on a case-by-case basis. The company may be required to provide some security, such as a banker's guarantee, to cover any potential liability to tax.

The waiver has been extended to payments made under construction or service contracts to Singapore branches of non-resident companies (IRAS/ICPAS Dialogue meeting on 9 June 1999).

The Singapore branch office of a non-resident company, which is not part of a substantial overseas group, can also apply for a waiver of the withholding tax on its interest income.

Once granted, the waiver will be valid indefinitely unless revoked by the Comptroller.

(See IRAS e-Tax Guide "Simplification of Income Tax Rules and Procedures for Companies", published on 7 August 2003.)

2014 Budget announcement

To reduce compliance costs for businesses, payers will no longer be required to withhold tax on s 12(6) and 12(7) payments made on or after 21 February 2014 to PEs that are Singapore branches of foreign-incorporated companies not known to the payers to be resident in Singapore (s 45(9)(c), 45A(2E)).

These branches in Singapore will continue to be assessed to tax on such payments that they receive and will be required to declare such payments in their annual tax returns.

Accounting for withholding tax — Form IR37

Any person who withholds tax from interest, royalties, management fees, directors' remuneration or other payments paid to a non-resident person must complete and submit Form IR37 to the Comptroller together with the relevant amount of tax withheld. The following information must be provided:

- the particulars of the local payer
- the nature of payment (eg interest, royalties, directors' fees, charter fees, etc)
- the particulars of the non-resident payee, including country of residence
- the date of payment
- the period of payment (or deemed payment)
- the gross amount
- the rate of tax and the amount of tax deducted, and
- the amount of penalty (if any) for late payment of withholding tax to the Comptroller.

Penalties

With effect from 1 July 2012, the rules for late payment penalties are as follows:

- If the tax withheld is not paid by the 15th day of the second month following the date of payment, a 5% penalty on the amount of unpaid tax will be imposed (s 45(4)(a)).
- If the tax withheld is not paid within 30 days after the 15th day of the second month following the date of payment, an additional 1% penalty will be imposed for each completed month that the tax remains unpaid, subject to a maximum additional penalty of 15% of the amount of tax outstanding (s 45(4)(b)).

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Example 5 illustrates the penalty regime.

Example 5

Company A paid interest to a non-resident person on 1 April 2015, the payment due date. Company A has to withhold tax and pay the amount of tax withheld to the IRAS on or before 15 June 2015. If payment is not made by 15 June 2015, a 5% penalty on the unpaid tax will be imposed.

If the tax withheld is not paid by 15 July 2015 (there are 30 days from 16 June 2015 to 15 July 2015), an additional 1% late payment penalty will be imposed on 16 July 2015, and thereafter for every completed month that the tax remains unpaid, subject to a maximum additional penalty of 15% of the amount of tax outstanding.

A person who fails to notify the Comptroller within the specified period that tax has been withheld from a payment made to a non-resident is guilty of an offence. On conviction, the person may be liable to:

(i) a penalty equal to three times the amount of tax withheld, and

(ii) a fine not exceeding $10,000, or imprisonment for up to three years, or both (s 45(5)).

A payer who fails to withhold tax from any payment made to a non-resident person is liable to account to the Government for the amount which he has failed to withhold (s 45(3)).

The manager or principal officer of a company is answerable for all matters regarding withholding tax (s 45(8)).

INCOME SUBJECT TO WITHHOLDING TAX

¶13-610 Section 12(6) payments — interest, etc

Under s 12(6), the following payments are deemed to be derived from Singapore:

(a) any interest, commission, fee or any other payment in connection with any loan or indebtedness, or with any arrangement, management, guarantee or service relating to any loan or indebtedness which is:

  (i) borne, directly or indirectly, by a person resident in Singapore or a PE in Singapore except in respect of any business carried on outside Singapore through a PE outside Singapore or any immovable property situated outside Singapore, or

  (ii) deductible against any income accruing in or derived from Singapore, or

(b) any income derived from loans where the funds provided by such loans are brought into or used in Singapore.

Where s 12(6A) applies, it ousts the application of the deemed-source provision of s 12(6) to the payment concerned. Section 12(6A) does not cover interest income. It distinguishes and sets out different conditions for two categories of payments:

(i) fees (except guarantee fees) relating to loan or indebtedness, and

(ii) guarantee fees relating to loan or indebtedness.

Income not deemed to be sourced in Singapore under s 12(6A)

Fees (except guarantee fees) relating to loan or indebtedness: s 12(6A)(a)

Under s 12(6A)(a), any payment for any arrangement, management or service relating to any loan or indebtedness will not be deemed to be derived from Singapore if the arrangement, management or service is performed outside Singapore for or on behalf of a person resident in Singapore or a PE in Singapore by a non-resident person who:

(i) (if he is not an individual) is not incorporated, formed or registered in Singapore, and

(ii) in any event:

(A) does not, by himself or in association with others, carry on a business in Singapore and does not have a PE in Singapore, or

(B) carries on a business in Singapore (by himself or in association with others) or has a PE in Singapore, but the arrangement, management or service is not performed through that business carried on in Singapore or through that PE.

Guarantee fees relating to loan or indebtedness: s 12(6A)(b)

Under s 12(6A)(b), any payment for any guarantee relating to any loan or indebtedness is not deemed to be derived from Singapore if the guarantee is provided for or on behalf of a person resident in Singapore or a PE in Singapore by a guarantor who is a non-resident person who:

(i) (if he is not an individual) is not incorporated, formed or registered in Singapore, and

(ii) in any event:

(A) does not by himself or in association with others, carry on a business in Singapore and does not have a PE in Singapore, or

(B) carries on a business in Singapore (by himself or in association with others) or has a PE in Singapore, but the giving of the guarantee is not effectively connected with that business carried on in Singapore or that PE.

Withholding tax

The final withholding tax rate of 15% will apply to interest and related payments deemed sourced in Singapore under s 12(6) (subject to s 12(6A)) and made to a non-resident person if the income is:

(a) not derived by the non-resident from any trade, business, profession or vocation carried on in Singapore, and

(b) not effectively connected with any PE of the non-resident in Singapore (s 43(3)).

Where both the above conditions are not met, the non-final withholding tax rate of 17% (20% for non-resident individuals) would apply, unless the IRAS has granted a waiver (in which case such income would be taxed by direct assessment, and the payer can pay the amount gross without withholding any tax).

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Exemption, reduction or remission of withholding tax

The following are additional examples of interest and related payments that qualify for tax exemption, reduction or remission:

- *Interest on money held in approved banks and approved Asian Dollar Bonds*

  Companies which do not carry on business in Singapore and do not have a PE in Singapore, and non-resident individuals are exempt from tax on:

  (i) interest derived from deposits in approved banks in Singapore, and

  (ii) interest received from approved Asian Dollar Bonds (s 13(1)(t) and 13(1)(v)).

- *Interest on money held in approved banks*

  Such interest which is derived by a non-resident person (not being an individual or a PE in Singapore) who carries on any operation in Singapore through a PE in Singapore is exempt from tax, if the funds for the deposits are not obtained from the operation (s 13(1)(ta)).

- *Approved foreign loan interest*

  Interest payable to a non-resident person by a Singapore manufacturer on an approved foreign loan for productive equipment may qualify for tax exemption or reduction (s 59 of the EEIA).

- *Interest on US$ Negotiable Certificates of Deposits (US$NCDs)*

  Payers of interest on US$NCDs are not required to withhold tax on interest derived by non-resident entities which have PEs in Singapore.

  (Monetary Authority of Singapore Circular, 22 July 1978)

- *Interest, etc, on interbank, interbranch transactions of approved banks*

  An approved bank need not withhold tax when paying interest to its branches, head office, or to another bank outside Singapore, whether or not the recipient bank has any PE in Singapore. This remission applies to all payments which fall under s 12(6), ie interest, commissions, fees, etc.

  (Monetary Authority of Singapore Circular, 15 January 1978)

- *Payments of income under s 12(6) made by banks and financial institutions to non-resident persons under specified circumstances*

  As was announced in the 2011 Budget, the withholding tax exemption regime for banks has been expanded to include all banks and financial institutions. The exemption will be granted on interest and payments falling within s 12(6) made to all non-resident persons (excluding PEs in Singapore) if the payments are made for the purpose of their trade or business. The enhanced scheme will apply to payments liable to be made:

  (a) during the period 1 April 2011 to 31 March 2021 (both dates inclusive) on contracts which take effect before 1 April 2011, and

  (b) on contracts which take effect on or after 1 April 2011 to 31 March 2021 (both dates inclusive).

  A sunset clause with a deadline of 31 March 2021 applies to the enhanced scheme.

The scope of the above exemption has been enhanced by s 45I which applies from 17 February 2012. Section 45I exempts from the obligation to withhold tax, persons who pay interest and other income referred to in s 12(6) to non-resident persons under specified circumstances. The exempted payers include banks, merchant banks, finance companies and certain capital markets services licence holders that underwrite debts or equity issuances and that are approved by the Minister or a person appointed by him. Section 45I does not apply to s 12(6) payments that are caught by s 33, the general anti-avoidance rule. The expiry date of 31 March 2021 is retained for s 45I exemption.

For s 12(6) payments that were made before 17 February 2012 to a non-resident person through its PE in Singapore, the payer was required to withhold tax.

- *Swap payments*

  All *bona fide* interest rate and currency swap payments made by financial institutions are exempt from tax and, therefore, not subject to withholding tax. The exemption will not apply to payments made to non-residents who have PEs in Singapore.

  (Income Tax (Exemption of Interest and Other Payments for Economic and Technological Development) Notification 2000, S 411/2000)

- *Interest on qualifying debt securities*

  Any interest derived from any qualifying debt securities issued during the period 27 February 1999 to 31 December 2018 (subject to conditions) is exempt from tax (s 45(9)(a)).

- *Discounts on qualifying debt securities*

  Any discounts on qualifying debt securities issued during the period 17 February 2006 to 31 December 2018 to qualifying non-residents are exempt from tax. Such discount payments to non-residents are therefore not subject to any withholding tax (s 13(1)(aa), 45A(2) to 45A(2C)).

- *Amounts payable from Islamic debt securities*

  Any amount payable from any Islamic debt securities which are qualifying debt securities, and issued during the period 1 January 2005 to 31 December 2018 is exempt (s 45A(2A)).

- *Prepayment fee, redemption premium or break cost from qualifying debt securities*

  These amounts are exempt if the qualifying debt securities are issued during the period 15 February 2007 to 31 December 2018 (s 45A(2B)(a)).

- *Interest on qualifying project debt securities*

  Any interest derived from any qualifying project debt securities issued during the period 1 November 2006 to 31 March 2017 (subject to conditions) is exempt from tax (s 45(9)(b)).

- *Discount, prepayment fee, redemption premium or break cost from qualifying project debt securities*

  These amounts are exempt if the qualifying project debt securities are issued during the period 15 February 2007 to 31 March 2017 (s 45A(2B)(b)).

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The terms "break cost", "prepayment fee", "qualifying debt securities", "qualifying project debt securities" and "redemption premium" are defined in s 13(16) (s 45A(3)).

Many of Singapore's tax treaties prescribe a reduced tax rate for interest income, usually 10%; some provide for tax exemption. (For details, please refer to the table of Tax Treaties at the Appendix of the book at ¶22-000).

Interest rate swap payments

The IRAS has long held the view that all interest rate swap (IRS) payments are "other payments made in connection with any loan or indebtedness" under s 12(6)(a) and therefore subject to withholding tax if they are made to a non-resident person.

The issue of whether IRS payments fall within the ambit of s 12(6)(a) was examined in the High Court case *ACC v CIT* (2010) MSTC ¶70-007; [2010] SGHC 316.

ACC v CIT (2010) MSTC ¶70-007; [2010] SGHC 316

ACC, a Singapore-incorporated company, and its overseas subsidiaries (most of which were special purpose companies (SPCs)) were in the business of aircraft leasing. Each SPC owned only one aircraft and had entered into a separate loan agreement with offshore banks to finance the purchase of the aircraft. The SPC then leased its aircraft to airline companies.

The SPC would be exposed to interest rate fluctuations if the lease agreement is at a fixed-rate rent and the loan agreement at a floating-rate interest. To minimise such exposure, the SPC would hedge its interest rate risk by entering into an IRS arrangement with its bank that would normally require some form of guarantee. To dispense with the need to provide the guarantees and to reduce certain administrative matters, ACC put in place an arrangement whereby it would enter into IRS arrangements with the Singapore banks (including Singapore branches of foreign banks) and then enter into IRS arrangements with its SPCs mirroring those arrangements with the Singapore banks.

The parties agreed that the IRS payments were not interest, commissions or fees. The issue was whether the IRS payments fall within the meaning of "any other payments in connection with any loan or indebtedness" under s 12(6). The High Court's decision was in the negative, and so the payments were not subject to withholding tax. The High Court ruled that:

(i) the expression "in connection with" in s 12(6)(a) was intended to include payments that are of a similar nature to interest and that arise as a result of obtaining finance. That expression does not cover a loan or indebtedness not involving the Singapore resident payer (ACC), and

(ii) at the point the IRS arrangement is entered into, it cannot be ascertained which of the counterparties (ie ACC and the SPC) will be indebted to the other in relation to the net payment that has to be made under the arrangement. Under the IRS arrangement, there was therefore no subsisting loan or indebtedness between the counterparties. The loans were between the non-resident persons, namely the SPCs and the foreign banks.

IRAS position

In light of the *ACC* decision, the IRAS has published on its website at www.iras.gov.sg the following examples of payments made in respect of interest rate/currency swap arrangements or structured products which are regarded as subject to withholding tax:

(a) Where the swap payments and interest payments together give the true economic effect of a financing arrangement. This would be the case if:

(i) the swap arrangement is directly connected with a financing arrangement and the counterparties for the two arrangements are the same, or

(ii) the documentation shows explicitly that the swap arrangement has been entered into to hedge a borrowing by the payer of the swap payments or the interest liabilities on such borrowing.

(b) Where the economic substance of a swap arrangement is that of a loan or a financing arrangement.

(c) Where the payments are in respect of any structured products (other than payments which are exempt under s 13(1)(zj)).

Withholding tax does not apply, however, to swap payments if the swap arrangement is not entered into in relation to any borrowing by the payer of the swap payments unless such arrangement is in substance a loan or financing arrangement of the payer of swap payments.

The above IRAS treatment takes effect for any swap payments due and payable on or after 26 November 2010.

¶13-615 Section 12(7) payments — royalties, etc

Under s 12(7), the following payments are deemed to be derived from Singapore:

(a) royalty or other payments in one lump sum or otherwise for the use of or the right to use any movable property (see ¶13-620)

(b) any payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information (often referred to as "**s 12(7)(b) first limb**") or for the rendering of assistance or service in connection with the application or use of such knowledge or information ("**s 12(7)(b) second limb**") (see ¶13-630)

(c) any payment for the management or assistance in the management of any trade, business or profession (see ¶13-640 and ¶13-645), or

(d) rent or other payments under any agreement or arrangement for the use of any movable property,

(i) which are borne, directly or indirectly, by a person resident in Singapore or a PE in Singapore (except in respect of any business carried on outside Singapore through a PE outside Singapore), or

(ii) which are deductible against any income accruing in or derived from Singapore.

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Based on the above structure of s 12(7), the scope of payments falling within s 12(7) is set out in para (a) to (d). The payment concerned would be deemed sourced in Singapore **if either one (or both) of the two conditions** (indicated in bold as (i) and (ii) above) is satisfied.

¶13-620 Royalties

Withholding tax

The withholding tax rate of 10% (final tax) will apply to royalty payments deemed derived from Singapore under s 12(7)(a) on or after 1 January 2005 and made to a non-resident person if the income is:

(i) not derived by the non-resident from any trade, business, profession or vocation carried on in Singapore, and

(ii) not effectively connected with any PE of the non-resident in Singapore (s 43(3A)).

Royalties derived by a non-resident person from a trade or business carried on in Singapore are subject to the non-final withholding tax of 17% (20% for non-resident individuals), unless the IRAS has granted a waiver (in which case, such income would be taxed by direct assessment).

The following types of income do not qualify for the 10% final tax (s 43(7)(a)):

- royalties and other payments received by an author, composer or choreographer, or any company in which the author, composer or choreographer beneficially owns all the issued shares for the assignment of, or the right to use, the copyright in any literary, dramatic, musical or artistic work (s 10(14)), and
- royalties and other payments which are derived by an inventor, author, proprietor, designer or creator of an approved invention or approved innovation, or by any company in which he beneficially owns all the issued shares, for the assignment of, or for the rights in the approved invention or approved innovation (s 10(16)).

Where the royalties qualify for the concession under s 10(14) or 10(16), the non-final withholding tax rate of 17% (20% for non-resident individuals) will apply to the lower of net royalties or 10% of the gross amount of royalties payable to the non-resident.

Rights-based approach to characterising software payments and payments for the use of or the right to use information and digitised goods

Before 28 February 2013, the IRAS treated all payments for the use of software as royalty for tax purposes. As a concession, four types of software payments (ie shrink-wrap software, site-license, downloadable software, and software bundled with computer hardware) qualified for withholding tax exemption for a 10-year period up to 27 February 2013 provided that the payer had not obtained any right to exploit the copyright of the software (see Historical Note below).

From 28 February 2013, the IRAS has applied the **rights-based approach** to characterise software payments and payments for the use of or the right to use information and digitised goods. Essentially, the rights-based approach characterises a payment based on the nature of the rights transferred in consideration for the payment. It distinguishes the transfer of a "copyright right" from the transfer of a "copyrighted article" from the owner to the payer.

(See IRAS e-Tax Guide "Rights-Based Approach for Characterising Software Payments and Payments for the Use of or the Right to Use Information and Digitised Goods", published on 8 February 2013.)

A transaction involves a **copyright right** if a payer is allowed to commercially exploit the right. The term "commercially exploit" means to be able to:

- reproduce, modify, adapt and distribute the software, information or digitised goods, or
- prepare derivative works based on the copyrighted software program, information or digitised good for distribution to the public.

By contrast, a **copyrighted article** is transferred if the rights are limited to those necessary to enable the payer to operate the software or use the information or digitised good for personal consumption or use within his business operations. In many instances, the user is provided merely with a copy of the product which he could download to a device for use.

In some cases, a payer may obtain multiple rights in one payment. In determining whether a payment is for the right to use a copyrighted article (in which case it is business profit) or a copyright right (in which case it is a royalty), the primary purpose of the payment will be examined. For example, if a customer downloads a book for personal enjoyment, the payment is primarily for acquiring a copyrighted article (ie a copy of the book). To the extent that the act of copying the digital signal onto the customer's device involves a right to copy the content, such a right is ancillary and incidental. The payment is essentially a payment for a copyrighted article, ie it is **business profit** and not royalty. The payment does not, therefore, fall within the scope of s 12(7), and if it is made to a non-resident person, is not subject to withholding tax.

Thus, under the rights-based approach, in relation to payments for the use of any software or payments for the use of information or digitised goods, the IRAS will regard the transferor as deriving **royalty** income only if the partial transfer of the rights permits the payer to commercially exploit the rights. Consequently, the previous withholding tax exemption regime for such payments no longer applied from 28 February 2013.

Under both the former and rights-based approaches, payments made to the copyright owner for a **complete alienation** of his copyright in the software, information or digitised goods are treated as business income (if the copyright right constitutes stock-in-trade) or capital gains (if otherwise) in the hands of the copyright owner. Such payments, if made to a non-resident person, are not subject to withholding tax. A complete alienation is a sale where consideration is paid for the perpetual transfer of

- the full legal and economic ownership, or
- the full economic ownership in respect of a specific geographical location,

of the exclusive rights in the copyright that constitutes a distinct and specific property.

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The abovementioned IRAS e-Tax Guide also includes more detailed definitions of the following terms:

"Digitised goods" means text, images or sounds that are transferred through any telephone network, cable network, satellite, the Internet or other similar forms of electronic transmission. Examples of digitised goods include online or downloadable songs, music videos, films, books, games, ring tones, logos and other similar goods.

"Information" refers to:

- Proprietary data or text or other content comprised in any newspaper or magazine article or report, including financial and business data (such as foreign exchange, stock and property data).
- Other proprietary data and information obtained solely for research purposes.

"Payments for information" include subscriptions to *Bloomberg*, *Reuters*, *Lexis-Nexis* and other similar subscriptions. For the purpose of applying the rights-based approach, payments for information exclude payments for the use of or the right to use patents, trademarks, registered designs, geographical indications, layout designs of integrated circuits, plant varieties and trade secrets.

"Software" refers to a program, or series of programs, containing statements or instructions to be used directly or indirectly in a computer in order to accomplish a certain desired result. Software may comprise any media, user manuals, documentation, database or similar item if these are incidental to the operation of the software. Payments for software include payments for downloadable software, software bundled with hardware, software licences (site, enterprise or network), limited-duration licensed software and software products with online elements.

Payments for the use of or the right to use software, information or digitised goods, not being a right to commercially exploit any of them in any form, not deemed sourced in Singapore: s 12(7A)(c)

The scope of s 12(7A)(c) covers payments for the use of or the right to use software, information or digitised goods, not being a right to commercially exploit in one form or another the copyright in such software, information or digitised goods such as the right to:

(i) reproduce, modify or adapt, and distribute the software, information or digitised goods, or

(ii) prepare a derivative work based on the software, information or digitised goods for distribution.

Where such payments are deemed sourced in Singapore under s 12(7)(a), 12(7A)(c) (inserted by the *Income Tax (Amendment) Act 2014)* will apply to oust that result. It follows that such payments will not be subject to withholding tax if they are made to a non-resident person.

The terms "digitised goods" and "information" are defined similarly to those given in the IRAS e-tax Guide mentioned above (s 12(7B)).

It is submitted, with respect, that s 12(7A)(c) does not fully reflect the distinction between royalty and business profit as enunciated in the IRAS rights-based approach. On the contrary, the wording of s 12(7A)(c) implies that the payments for the use of or the right to use software, information or digitised goods, not involving a right to commercially exploit them, continue to be royalty in nature. Withholding tax will no longer apply to such payments made to non-residents not because such payments are now characterised as business profit but because they are not deemed derived from Singapore.

For easy reference, the former IRAS withholding tax exemption regimes (which have expired) are retained below.

Historical note

The IRAS' former position was that all payments for the use of software were royalty. These payments were therefore subject to withholding tax if made to a non-resident person (s 12(7)(a) and 45A). The IRAS had, however, granted withholding tax exemption for a ten-year period (which expired in February 2013) for the following four types of software payments made to a non-resident person by end-users (conditions apply):

- shrink-wrap software
- downloadable software
- site licence, and
- software bundled with computer hardware.

As regards payments for the provision of information, the IRAS' former position was to regard them as payments for the use of or right to use "scientific, technical, industrial or commercial knowledge". Payments for the use of or right to use digitised goods such as downloadable music, movies and books may also be treated as payments under s 12(7)(a) or payments for information under s 12(7)(b), depending on the specific nature of the digitised goods. The IRAS had similarly granted a withholding tax exemption for a ten-year period (which expired in February 2013) for such payments made to a non-resident person by end-users for information and digitised goods.

Exemption of software payments from withholding tax

Royalty payments made to a non-resident person for the following software payments were exempt from tax:

- shrink-wrap software
- downloadable software for end-user
- site licence, and
- software bundled with computer hardware.

The exemption would only apply if the income:

(i) was not attributable to a trade, business, profession or vocation carried on or exercised by the non-resident person in Singapore, and

(ii) was not effectively connected with any PE of that person in Singapore.

Where a non-resident person who was carrying on or exercising a trade, business, profession or vocation in Singapore had received any of the above software payments, the IRAS may, by concession, waive the requirement to withhold tax if the non-resident person declared such payments as income on his annual tax return.

Shrink-wrap software is software distributed in wrapped boxes (eg compact discs or diskettes). Under the shrink-wrap licence, the buyer receives the right to use the program on his computer and is not permitted to modify it in any way.

Downloadable software for end-user is software downloaded by an end-user from the internet or a network for a fee. The end-user acquires the right to run the software on a single computer or a computer network but not the right to exploit the copyright to the program.

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A *site licence* is a software licence that allows the licensee to install the software on multiple computers or servers for operation within its own business, location or facility. The licensee acquires the rights to operate the program but is prohibited from on-selling the software and reverse-engineering the program. Where the payment for site licence includes an amount for maintenance and rendering of assistance in connection with the use of that software, then the whole amount would be exempt from tax.

Software bundled with computer hardware is computer software that has been pre-installed in the computer hardware. The software and computer hardware are sold together as a single product, without the software and computer hardware being priced separately. Here, the buyer receives the right to use the program on the computer hardware but not to modify or resell the software on its own.

(See IRAS e-Tax Guide "Exemption of Software Payments from Withholding Tax" (Revised Ed), last revised on 1 March 2005.)

Exemption of payments for the use of or the right to use information and digitised goods by end-users from withholding tax

Payments made by an end-user to a non-resident person for the use of or the right to use information or digitised goods were exempt from tax for a period of 10 years from 28 February 2003 to 27 February 2013. The exemption was granted under s 13(4).

(See Income Tax (Exemption of Royalties and Other Payments for Economic and Technological Development) (No 2) Notification 2003; IRAS e-Tax Guide "Exemption of Payments for the Use of or the Right to Use Information and Digitised Goods by End-users from Withholding Tax", published on 28 February 2003.)

"Information" is defined as "proprietary data or text or other content". The exemption would apply where the end-user of such information used the information for his personal consumption or for use within his own business operations and did not have the right to exploit the copyright of the information.

"Digitised goods" refer to images, sounds or text that are transferred through the Internet, telephone, cable network, satellite or any other form of electronic transmission to an end-user for a fee and does not include software. Similarly, exemption would apply to an end-user of the digitised goods who had been granted the right to use the digitised goods for his personal consumption or for use within his own business operations and who did not have the right to copy, modify or adapt the digitised goods.

The withholding tax exemption would not apply to:

- payments by an information reseller who had been granted the right to exploit the copyright of the information. In such instance, the information reseller acquired the master copy of the information and was permitted to sell a copy of the information duplicated from the master copy
- payments for the use of or the right to use patents, trademarks, registered designs, geographical indications, layout designs of integrated circuits, trade secrets or software
- payments by a broadcasting company who had acquired a movie or film for the purpose of broadcasting it to its viewers, and
- income (payments) which was derived from a trade, business, profession or vocation carried on or exercised by the non-resident in Singapore, or which was effectively connected with any PE of the non-resident in Singapore.

The IRAS had, by concession, waived the requirement to withhold tax on these last types of payments if the non-resident person receiving the payments declared them as income in his tax return.

Exemption of payments for web-hosting services from withholding tax

The IRAS has clarified the tax treatment of the following payments made for web-hosting services provided by non-resident companies:

(i) Where payments for web-hosting services are for technical or know-how related assistance, they are considered as payments for technical services falling within s 12(7)(b) second limb. However, there is no requirement to withhold tax for payments to a non-resident person for the provision of such services if the web-hosting services are rendered outside Singapore.

Withholding tax based on the prevailing corporate tax rate (unless reduced by a tax treaty) applies to payments made to non-residents where the web-hosting services are rendered in Singapore.

(ii) Where payments are for the rental of movable property, eg leasing of server equipment, they fall within s 12(7)(d) and are subject to final withholding tax at 15% regardless of the location of the equipment.

(See IRAS e-Tax Guide "Tax Treatment on Payments for Web-Hosting Services" (2nd Ed), published on 23 July 2002.)

¶13-630 Know-how payments and technical assistance fees

Section 12(7) first limb payments are generally referred to as know-how payments while s 12(7) second limb payments are generally referred to as show-how payments (or technical assistance fees).

Know-how payments deemed to be derived from Singapore are assessable under s 10(1)(f) unless they arise from a trade, business, profession (in which case, s 10(1)(a) applies).

Show-how payments are assessable under s 10(1)(a).

Note that s 12(7)(b) first limb applies to payments for the use of or the right to use the know-how. It does not apply to payments for the sale of the know-how. Such payments would be subject to tax in Singapore if they:

(i) constitute income, and

(ii) are regarded as derived from Singapore under the general source rules as discussed in ¶6-720.

Technical assistance fees not deemed sourced in Singapore: s 12(7A)(a)

Where s 12(7A) applies, it ousts the application of the deemed-source provision of s 12(7) to the payment concerned. Section 12(7A) does not cover know-how payments. It covers only:

- payments for the use of or the right to use software, information or digitised goods, not being a right to commercially exploit any of them in any form (s 12(7A)(c), see ¶13-620 above)
- show-how payments (s 12(7A)(a), see below), and
- management fees (s 12(7A)(b), see ¶13-640).

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Under s 12(7A)(a), any payment for the rendering of assistance or service in connection with the application or use of scientific, technical, industrial or commercial knowledge or information for, or on behalf of, a person resident in Singapore or a PE in Singapore is not deemed sourced in Singapore if the rendering of the assistance or service is performed outside Singapore by a non-resident person who:

(i) (if he is not an individual) is not incorporated, formed or registered in Singapore, and

(ii) in any event:

   (A) does not by himself or in association with others, carry on a business in Singapore and does not have a PE in Singapore, or

   (B) carries on a business in Singapore (by himself or in association with others) or has a PE in Singapore, but the rendering of assistance or service is not performed through that business carried on in Singapore or that PE.

Withholding tax

The final withholding tax of 10% will apply to know-how payments deemed to be derived from Singapore under s 12(7)(b) and made to a non-resident person if the income is:

(a) not derived by the non-resident from any trade, business, profession or vocation carried on in Singapore, and

(b) not effectively connected with any PE of the non-resident in Singapore (s 43(3A)).

Where both the above conditions are not met, the non-final withholding tax of 17% (20% for non-resident individuals) would apply, unless the IRAS has granted a waiver (in which case, such income would be taxed by direct assessment).

By contrast, show-how payments are subject to the 17% non-final tax (20% for non-resident individuals) (s 43(7)(b)). A Singapore payer can apply a lower withholding tax rate on such payments if certain conditions are met, as explained in ¶13-645.

¶13-640 Management fees

Payments for services of an administrative, financial and marketing nature would fall within the provisions of s 12(7)(c). As an exception, the following types of payments are usually not caught under s 12(7)(c):

- brokerage fees for services rendered outside Singapore to arrange for the charter of vessels
- supervisory fees paid to foreign naval architects for the supervision of vessels under construction in foreign shipyards
- sales and purchasing commissions paid to non-residents, and
- repairs and maintenance of plant and equipment in foreign workshops or shipyards.

Management fees not deemed sourced in Singapore: s 12(7A)(b)

Under s 12(7A)(b), any payment for the management, or assistance in the management, of any trade, business, profession for, or on behalf of, a person resident in Singapore or a PE in Singapore is not deemed sourced in Singapore if the management or assistance is performed outside Singapore by a non-resident person who:

(i) (if he is not an individual) is not incorporated, formed or registered in Singapore, and

(ii) in any event:

  (A) does not by himself or in association with others, carry on a business in Singapore, and who does not have a PE in Singapore, or

  (B) carries on a business in Singapore (by himself or in association with others) or has a PE in Singapore, but the management or assistance is not performed through that business carried on in Singapore or that PE.

Withholding tax

A non-final withholding tax of 17% (20% for non-resident individuals) applies to payments of management fees deemed derived from Singapore under s 12(7)(c) and made to a non-resident person. A lower withholding tax rate may apply if certain conditions are met (see ¶13-645).

There is no obligation to withhold tax if the management fees payable to the non-resident fall outside the scope of s 12(7)(c) by virtue of s 12(7A)(b) (ie where the management services are rendered outside Singapore).

¶13-645 Lower withholding tax on related party services

The following administrative concessions allow companies to apply a lower withholding tax rate on the gross margin derived by a non-resident from the provision of related party services performed in Singapore that fall under s 12(7)(b) (ie technical services) and s 12(7)(c) (ie management services) without the need to seek prior approval from the IRAS if the following conditions are met:

(a) The services provided by the non-resident company to its related parties are not also provided to an unrelated party.

(b) The services must be **routine support services** (eg accounting, payroll and administrative functions) with a mark-up of at least 5%.

(c) No disallowable expenses (eg depreciation) are included in the costs incurred by the non-resident company in providing the services.

The list of routine support services is found in Annex C of the IRAS e-Tax Guide "Transfer Pricing Guidelines" (2nd Ed), published on 6 January 2015 (see also ¶13-900). This e-Tax Guide consolidates the four previous e-Tax guides on transfer pricing:

- "Transfer Pricing Guidelines", published on 23 February 2006
- "Transfer Pricing Consultation", published on 30 July 2008 and revised on 6 August 2008

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- "Supplementary Administrative Guidance on Advance Pricing Arrangements", published on 20 October 2008, and
- "Transfer Pricing Guidelines for Related Party Loans and Related Party Services", published on 23 February 2009.

The IRAS has stated that it is prepared to accept a 5% mark-up for these routine support services. See the latest IRAS e-tax Guide (s 12 of the Guide and Annex C).

Example 6

(Taken from the IRAS website at www.iras.gov.sg)

Company A, a foreign company, provides routine support services to its related Company B in Singapore. These services are performed in Singapore. Company A charges a mark-up of 5% on the cost incurred. Company B can apply a lower withholding tax rate of 0.81% when making the gross payment of $105,000 to Company A. The lower withholding tax rate is determined as follows:

	$
Fees charged at cost plus mark-up	105,000
Total expenditure incurred (all allowable)	100,000
Mark-up/profit	5,000
Tax payable on mark-up @ 17%	850.00
Lower withholding tax rate* ($850/$105,000 × 100)	0.81%
Withholding tax payable to IRAS (0.81% × $105,000)	850.50
Net fees payable to Company A	104,149.50

** round up to nearest two decimal places when completing Form IR37*

Note that the lower withholding tax rate is essentially the effective tax rate that is being applied on the net profits. Without the concession, the amount of withholding tax would be $17,850 (17% × $105,000). Company A would have to file a tax return subsequently in order to claim deduction for allowable expenses incurred and a refund of the tax overpaid.

To apply the lower withholding tax rate, the Singapore payer has to complete Form IR37 and submit a letter confirming that no disallowable expenses are included in the cost incurred by the non-resident related company when rendering the routine support services. The confirmation letter must be obtained from the non-resident related company where the Singapore payer is making its first payment to that company.

Application for special consideration by the IRAS where conditions are not met

For services rendered that do not meet the above conditions, the Singapore payer can apply to the IRAS for consideration, on a case-by-case basis, to withhold tax based on a lower withholding tax rate on gross payments made to non-residents. The IRAS has requested the following information to be provided to facilitate its review:

- The nature of services provided by the related party.
- The name and address of the related party and the nature of relationship.
- The percentage of mark-up, whether it is at arm's length and the basis for claiming that it is at arm's length.

- The detailed profit and loss accounts with supporting schedules showing the breakdown of expenses and highlighting the non-deductible items (if any). Otherwise, a letter from the non-resident related company confirming that no disallowable items are included in the costs incurred must be submitted.

The abovementioned IRAS e-Tax Guide not only covers "routine support services" but also states that if certain stipulated conditions are satisfied, the IRAS is prepared to accept:

(a) 0% mark-up for **services provided on a cost-pooling basis** (cost contribution arrangements are however excluded), and

(b) 0% mark-up for **strict pass-through costs**.

¶13-650 Rent for use of movable property

Withholding tax

The final withholding tax of 15% will apply to rental or other payments for the use of movable property deemed derived from Singapore under s 12(7)(d) and made to a non-resident person if the income is:

(a) not derived by the non-resident from any trade, business, profession or vocation carried on in Singapore, and

(b) not effectively connected with any PE of the non-resident in Singapore (s 43(3)).

Where both the above conditions are not met, the non-final 17% withholding tax (20% for non-resident individuals) will apply, unless the IRAS has granted a waiver (in which case, such income would be taxed by direct assessment).

Payments to non-residents for the charter of ships or aircraft fall within s 12(7)(d). The special withholding tax rates for ship or aircraft charter fees are found in ¶13-840. Note, however, that payments for bareboat, voyage and time charter to non-residents (excluding PEs in Singapore) for the use of ships due and payable on or after 17 February 2012 are exempt from tax.

The IRAS has clarified that rent or other payments made for the use of certain movable property outside Singapore are not caught under s 12(7)(d) if the use of such property is incidental to the overseas business trips made by the employees. No withholding of tax is therefore required for rent or payments made to a non-resident person for the use of cars, hand phones, laptops and other similar items outside Singapore.

(See IRAS e-Tax Guide "Rental of Cars, Hand Phones and Other Similar Items during Overseas Business Trips (Clarification of the Scope of sec 12(7)(d) of the Income Tax Act)", published on 28 February 2003.)

Example 7

ABC Pte Ltd, a Singapore resident person, sent its purchasing manager to Malaysia for a business meeting with a supplier. For this business trip, the company rented a vehicle from a car leasing company (DEF Rental Sdn Bhd) located in Johor for the purchasing manager. Is the payment made to DEF Rental Sdn Bhd subject to Singapore withholding tax?

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Solution:

Generally, payments made by a Singapore resident person (ie ABC Pte Ltd) to a non-resident person (ie DEF Rental Sdn Bhd) under any agreement or arrangement for the use of movable property are deemed to be sourced in Singapore under s 12(7)(d). This is regardless of where the movable property is located or used.

Accordingly, the payer has to withhold tax at 15% on the payment, or at such reduced rates under an applicable tax treaty.

However, under the IRAS concession above, ABC Pte Ltd is not required to withhold tax on the rental payments if:

(a) the use of the rental car is outside Singapore, and

(b) the rental of the car is incidental to the overseas business trip made by its purchasing manager.

Exemption

The following payments are exempt from tax under s 13(4):

- *Payments to non-resident satellite operators*

  Payments made to a person who is not resident in Singapore and has no PE in Singapore for the use of or the right to use any facility or equipment in a space satellite for any period from 11 July 1997 to 10 July 2012 are exempt from tax.

  (Income Tax (Exemption of Royalties and Other Payments for Economic and Technological Development) (Amendment) Notification 2002)

  The term "space satellite" means an apparatus placed in orbit relative to the earth for any economic, scientific or technological purpose.

- *Payments to non-resident submarine cable operators*

  Payments for the use of or the right to use any international telecommunication submarine cable capacity (including any payment for indefeasible rights of use (IRU)) to non-resident persons are exempt from withholding tax for a five-year period from 28 February 2003 to 27 February 2013. The exemption would apply if such income of the non-resident operator is:

  (i) not derived from any trade or business carried on or exercised in Singapore, and

  (ii) not effectively connected with any PE in Singapore.

  Tax exemption is also granted to such income which is derived by the non-resident person after 27 February 2013:

  (a) under a contract for such use or right to use which takes effect at any time during the period 28 February 2003 to 27 February 2013, or

  (b) under a contract for such use or right to use which is extended or renewed, where the extension or renewal takes effect at any time during the period 28 February 2003 to 27 February 2013.

  (Income Tax (Exemption of Royalties and Other Payments for Economic and Technological Development) Notification 2003.)

¶13-655 Commission or other payment to junket promoter

Under s 12(8), any commission or other payment paid to a junket promoter for arranging a junket with a casino operator in Singapore is deemed derived from Singapore if it is:

(i) borne, directly or indirectly, by a person resident in Singapore or a PE in Singapore except in respect of any business carried on outside Singapore through a PE outside Singapore, or

(ii) deductible against any income accruing in or derived from Singapore.

A junket promoter means a person who organises or promotes a junket.

A junket refers to an arrangement under which a person or group of persons is introduced to a casino operator by a junket promoter who receives a commission or other payment from the casino operator or the person for the time being in charge of the casino.

If the junket promoter is a non-resident, a withholding tax at 3% applies (s 45H).

Withholding tax will however not apply to any payment liable to be made on or after 1 January 2015 by a person to a Singapore branch of a licensed international market agent, being a foreign-incorporated company not known to the person to be resident in Singapore (s 45H(2A)).

¶13-660 Non-resident directors' remuneration

Remuneration paid by a company to a non-resident director is subject to withholding tax of 20% (s 45B).

The residency status of a director is determined according to the normal rules of residence for individuals (see Chapter 2 at ¶2-100ff).

The IRAS has clarified, however, that fees paid to a non-resident director (purely in his capacity as director) by a non-resident company that has no business presence in Singapore are not sourced in Singapore even if the directors may, on some occasions, hold their board meetings in Singapore. Consequently, such fees will not be subject to withholding tax.

¶13-670 Distributions by unit trusts

A unit trust must withhold tax at 17% (20% for non-resident individuals) if it makes a distribution, which is deemed to be income under s 10(19), 10(20) and 10(21) to a non-resident unit-holder (s 45C).

The following distributions to non-residents are subject to withholding tax:

(a) distributions made by an approved unit trust (s 10B) to a non-resident with a PE in Singapore out of gains or profits derived from the disposal of securities which have not been taxed in the hands of the unit trust (s 10(19)), and

(b) distributions made by a designated unit trust to a non-resident company that is not a "foreign investor" within the meaning given under s 10(23), out of:

- gains or profits derived from the disposal of securities
- interest (other than interest for which tax has already been deducted), and

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- foreign dividends received in Singapore which do not form part of the statutory income of the designated unit trust under s 35(12) (s 10(20) and 10(23)).

Withholding tax will however not apply to any distribution made on or after 1 January 2015 by a unit trust to a Singapore branch of a foreign-incorporated company not known to the trustee to be resident in Singapore (s 45C(3)).

¶13-672 Gains from real property transactions

A non-resident real property trader is chargeable to tax under s 10(1)(a) for any gains from the disposal of any real property in Singapore. The purchaser of the property, or the solicitor acting for the purchaser, must withhold tax at 15% (non-final) from the proceeds due to the non-resident vendor (s 45D(1)). The non-resident vendor may subsequently file a tax return to claim deduction for allowable expenses.

Where a purchaser or solicitor has withheld tax, the purchaser or solicitor must give notice and pay the amount withheld to the Comptroller by the 15th day of the following month (s 45D(2)).

Where the real property is jointly owned by two or more persons, for purposes of calculating taxable gains, the amount of any gain from the disposal is presumed to be shared equally by the joint owners until it is proved otherwise (s 45D(5)).

Withholding tax will however not apply to any payment made on or after 1 January 2015 by the purchaser or solicitor to a Singapore branch of a foreign-incorporated non-resident company (s 45D(5A)).

¶13-673 Deduction of investment from SRS account of non-citizen members

From 1 July 2015, SRS members who have reached the retirement age can make withdrawals not only in the form of cash (which was the only form permitted up to 30 June 2015) but also by transferring their SRS investments into another investment account. Similar to cash withdrawals from the SRS account, the value of such SRS investments withdrawn will be brought to tax as income deemed under s 10(1)(g) (s 10L). Specifically, the prescribed value of any investment made using SRS funds where such investment has been deducted from the balance in the SRS account following an approval by the SRS operator concerned is treated as sums withdrawn from an SRS account. Subject to conditions similar to those applicable for cash withdrawals, only 50% of that prescribed value may be brought to tax (see ¶6-910).

An SRS operator is permitted to approve the deduction of an investment from the balance in an SRS account belonging to a non-citizen SRS member if and only if the SRS operator has collected tax from the SRS account holder or his legal personal representative on 50% of the prescribed value of the investment. The SRS operator must account to the Comptroller for the tax he is liable to collect. This obligation to withhold tax and to account for it to the IRAS is found in s 45EA.

See also [¶13-140].

¶13-674 Payments to non-resident professionals

Any income accruing in or derived from Singapore on or after 3 May 2002 from any profession or vocation carried on by:

(i) a non-resident individual whose principal place of business is situated outside Singapore, or

(ii) a foreign firm,

will be subject to final withholding tax at 15% on the gross amount derived from services performed in Singapore **(s 45F)**.

A non-resident arbitrator is not subject to the above rule (s 43(4) and 13(1)(r)) (see also the 2015 Budget announcement below).

The 60-day exemption rule for non-resident employees (see Chapter 5 at ¶5-110ff) also does not apply to a non-resident professional.

A "foreign firm" is an unincorporated body of two or more persons who have entered into partnership with one another to carry on a business for profit and whose principal place of business is situated outside Singapore (s 43(10)).

Non-resident professionals include:

- foreign experts who are either invited by government bodies, statutory boards or private organisations to impart their technical know-how or expertise in Singapore
- foreign speakers or academics conducting seminars or workshops
- Queen's Counsels
- consultants, trainers, coaches, and
- arts exhibitors.

Gross income or fees refer to both monetary and non-monetary payments and include:

- all fees
- allowances, and
- benefits-in-kind provided (eg daily refreshers or daily charges, *per diem*, honorarium, tax allowance, airfare, food and accommodation provided).

No deduction is allowed against the gross income or fees for any expenses incurred. The concession of not taxing airfare cost and any accommodation provided for less than 60 days in any calendar year does not apply to non-resident professionals from 3 May 2002.

The non-resident professional or foreign firm may elect to be subject to 20% withholding tax on the net amount (ie 20% non-final tax). The election is not revocable and it must be made by the 15th day of the second month following the date of payment of the income to the individual or firm (s 43(5)). Before the change effected by the *Income Tax (Amendment) Act 2013*, the deadline to pay over the tax withheld was 45 days from the date of payment.

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2015 Budget announcement

As set out above, a 15% withholding tax applies to the gross income payable to a non-resident mediator (being a professional) who derives income from mediation work carried out in Singapore; such a mediator may elect to be taxed at 20% of the net income instead.

To promote Singapore's commercial mediation sector, income derived by a non-resident mediator for mediation work carried out in Singapore from 1 April 2015 to 31 March 2020 will be tax-exempt. The Ministry of Law will provide details of this tax change by March 2015.

Separately, a review date of 31 March 2020 will be legislated for the tax exemption scheme for non-resident arbitrators to ensure that the relevance of the scheme is periodically reviewed.

¶13-675 Distributions by real estate investment trusts (REITs)

Withholding tax applies to distributions made by REITs out of the income of the trust where tax has not been paid on that income by the REIT's trustee (s 45G).

The withholding tax rates are as follows:

(a) 10% — for distributions made to a non-resident person (other than an individual) during the period 18 February 2005 to 31 March 2015 who:

  (i) does not have any PE in Singapore, or

  (ii) carries on any operations in Singapore through a PE in Singapore, where the funds used by that person to acquire units in that REIT are not obtained from that operation.

(b) 17% (20% for non-resident individuals) — for distributions made to any other person not known to the trustee to be resident in Singapore or to be:

  (i) an individual

  (ii) a company incorporated and resident in Singapore

  (iii) a branch in Singapore of a foreign-incorporated company that has obtained the Comptroller's approval for distributions to be made by the trust to the branch without deduction of tax, or

  (iv) a body of persons incorporated or registered in Singapore, including a charity registered under the *Charities Act (Cap 37)* or established by any written law, a town council, a statutory board, a registered co-operative society or a registered trade union (s 45G(2)).

Withholding tax will however not apply to any distribution made on or after 1 January 2015 by a trustee of a REIT to a Singapore branch of a foreign-incorporated company not known to the trustee to be resident in Singapore (s 45G(4A)).

NON-RESIDENT DOING BUSINESS IN SINGAPORE

¶13-710 Trade or business partly carried on in Singapore

Where a non-resident person partly carries on a trade or business in Singapore, the gains or profits of such trade or business are deemed derived from Singapore to the extent that they are not directly attributable to the foreign operations (s 12(1)). Such a non-resident would be subject to tax on the portion of the gains or profits which is deemed derived from Singapore.

What constitutes "carrying on of trade or business in Singapore"

Although the terms "trade" and "business" are not defined in the Act, tax cases indicate that "business" is wider than "trade" (see Chapter 4, ¶4-300). The distinction between "trading in" versus "trading with" (see ¶4-400) is therefore, it is submitted, applicable only to the profits derived from trade, ie from the sale of goods or commodities and not from, say, the rendering of services.

In the context of s 12(1), the activities that constitute the carrying on of a trade or business in Singapore are not confined to activities by way of a trade, commerce or manufacture. They can consist of rendering services to others. Thus, if a non-resident company houses its technical personnel in Singapore for providing services (or back-up services) in Singapore, the company may be regarded as carrying on a trade or business in Singapore.

Whether the non-resident person carries on a trade or business in Singapore and is therefore subject to tax on the income derived from it would depend on the facts. The "**operations test**" is applied to ascertain whether there is income derived from Singapore (see Chapter 3, ¶3-200).

The relevant facts may include:

- whether there is capital employed, eg the ownership of trading stock or other property
- whether the taxpayer carries on business operations in Singapore, eg performing acts in Singapore under a contract
- the location where the contracts are signed
- the location where the services are performed, and
- the location where the title of goods passes.

If a trade or business is regarded as carried on in Singapore, any income accruing in or derived from Singapore would be subject to Singapore tax.

¶13-720 Permanent establishment

Definition of "permanent establishment" in s 2(1)

The definition of "permanent establishment" was introduced in s 2(1) in 1977 (for the full definition, see Chapter 2, ¶2-800). In a purely domestic scenario where there is no applicable tax treaty, the trading or business profits of a non-resident person would be subject to tax in Singapore if the operations giving rise to the profits in question are carried on in Singapore. As explained in ¶2-800, in principle, the question whether there are trading or business profits sourced in Singapore does not depend on whether a PE under s 2(1) exists in Singapore.

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Example 8

Nunca Ltd, a US resident company, undertakes a construction project in Singapore. The project takes 20 months to complete. Singapore does not have a comprehensive tax treaty with the US.

Nunca Ltd has a work site or a construction project in Singapore. Therefore Nunca has a PE under s 2(1) in Singapore.

Example 9

Morocco Enterprises Ltd, a US resident company, assigned one of its employees to Singapore. This employee was given the authority to enter into sales agreements on behalf of the company and to meet orders with stock warehoused in Singapore.

Morocco Enterprises Ltd is considered to have a PE under s 2(1) in Singapore.

A foreign enterprise that has a PE in Singapore but without a source of income in Singapore will remain insulated from Singapore taxation (see the IRAS clarification at Chapter 4, ¶4-400).

With respect to the word "warehouse" in the s 2(1) definition of "permanent establishment", the IRAS has clarified that the mere storage of goods in a warehouse by a person who does not carry on a business in Singapore will not give rise to any tax liability (Ministry of Finance Press Statement, 20 December 1977).

"Permanent establishment" in treaty-country scenario

The definition of "permanent establishment" in s 2(1) is similar to that adopted by Singapore in its tax treaties. Where a tax treaty applies, the treaty definition of "permanent establishment" must also be taken into account (see ¶14-520).

In a typical treaty-country scenario (where the relevant treaty is based on the Organisation for Economic Co-operation and Development (OECD) Model treaty), the taxability in Singapore of the non-resident person's business profits will depend on whether the profits are attributable to a PE in Singapore. This means that the non-resident person will not be subject to Singapore tax even if it has business profits sourced in Singapore, so long as its activities in Singapore do not pass the threshold of a "permanent establishment" as defined in the tax treaty (for further details, see Chapter 14, ¶14-520).

For more on the IRAS position concerning the attribution of profit to a PE in Singapore, see also s 34D and the IRAS e-tax Guide "Transfer Pricing Guidelines" (2nd Ed), published on 6 January 2015 (at ¶13-900).

¶13-730 Branch or subsidiary

A non-resident company can conduct its business in Singapore through a branch or a subsidiary.

The choice between establishing a branch or a subsidiary depends on tax and non-tax reasons. Proper consideration must be given to the laws of the home country and those of Singapore.

Countries such as the US, Japan and the United Kingdom (UK) tax foreign branch income as it arises. Where a loss is expected in the initial period of operations and the home country's tax laws allow the foreign branch losses to be set off currently against the income of the head office, a branch may be the preferred choice.

A non-resident company considering a business form for its Singapore operations should consider the following, among others:

- whether the home country taxes foreign income (including income that arises in Singapore) and, if so, whether currently or only upon remittance
- whether losses incurred in Singapore are currently allowed in the home country
- how dividends received from a Singapore company would be taxed in the home country (eg availability of tax credits in the home country)
- the treatment of differences in the exchange rates between the two countries
- the extent of foreign exchange controls in both countries, and
- whether there are withholding taxes.

Thus, if a non-resident company has a branch in Singapore, payments of an income nature under s 12(6) or 12(7) that are made to that branch (being legally a part of the non-resident company and not itself a separate entity) would be subject to withholding tax. However, the branch may qualify for a waiver of withholding tax if some conditions are satisfied (see ¶13-400).

¶13-740 Non-resident companies

For a comparison of the tax treatment of a resident company versus a non-resident company, see Chapter 2, ¶2-620.

¶13-750 Commercial representatives

Resident representative

A foreign company can function in Singapore through a resident representative, who is a natural person, without having to establish a place of business here. There are limits to the operations that a foreign company can carry on through its representative. The representative can market the company's products and liaise with customers. Usually, such activities do not amount to carrying on a business in Singapore. The foreign company cannot consign stock, materials, equipment, etc, to the representative for him to effect sales or enter into contracts in Singapore in its name. Otherwise, the company may be regarded as carrying on a business in Singapore. There is no tax exposure if the representative merely carries samples of stocks in order to deal with queries from existing and potential customers.

Representative office

A non-resident company can register a representative office (RO) in Singapore with International Enterprise (IE) Singapore. An RO is not a branch. IE Singapore has laid down the following conditions for an RO to be registered:

- it must confine its activities to promotional and liaison work on behalf of the parent company
- it cannot sign any contracts in Singapore
- it cannot open and/or receive letters of credit, and

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- it must not engage in any consultancy, trading or business activities directly or on behalf of the parent company in Singapore.

As long as the above conditions are not breached, the non-resident company would not be regarded as carrying on any business in Singapore and would not be exposed to Singapore tax.

Service centres

Service centres primarily perform two functions:

(i) They supervise and coordinate the activities of affiliated companies, agents, distributors and licensees in the region as regional offices.

(ii) They supply technical services to the foreign companies under their scope.

Where:

- technical staff are stationed in Singapore to provide those technical services or "after-sales" services on a somewhat permanent basis, and
- such services involve a charge and/or the maintenance of spare parts in Singapore,

the non-resident company may be regarded to have derived trade or business income in Singapore.

NON-RESIDENT OPERATORS OF SHIPS AND AIRCRAFT

¶13-810 Basis of assessment

For non-resident operators of ships and aircraft, the profits arising from the *outward shipment* of passengers, mail, livestock, and goods from Singapore are deemed to accrue in Singapore (s 12(2)). Two bases for determining the taxable profits in Singapore exist:

(i) the "ratio certificate" method, and

(ii) the "arbitrary" method.

The "ratio certificate" method

This method would apply where a certificate issued by the tax authority of the country of residence of the operator is submitted to the Comptroller and the following requirements are satisfied:

- The basis of assessment adopted by the foreign tax authority must not be materially different from the basis adopted by Singapore.
- The foreign tax authority must compute and assess the full profits of the non-resident operator from his shipping or airline business.
- The certificate must state the total sums received or receivable in respect of the carriage of passengers, mail, livestock and goods, the adjusted profits (or losses) as computed for income tax purposes (before adjustments in respect of capital allowances (CA)) and the CA for tax purposes.

The following formula is applied to ascertain the proportion of adjusted profits (losses) applicable to Singapore:

$$\frac{\text{Adjusted world profit (loss)}}{\text{Gross world shipping or airline earnings}} \times \text{Gross shipping or airline earnings from outward shipments from Singapore}$$

Similarly, the CA applicable to Singapore are computed as follows:

$$\frac{\text{Total world CA}}{\text{Gross world shipping or airline earnings}} \times \text{Gross shipping or airline earnings from outward shipments from Singapore}$$

The income assessable to tax in Singapore is arrived at by subtracting the CA applicable to Singapore from the adjusted profits applicable to Singapore.

If it results in a loss, the loss can be:

(i) transferred to group members under the group relief scheme

(ii) carried back against the assessable income of the immediate preceding YA, or

(iii) carried forward for set-off against future profits.

Similarly, any CA which cannot be absorbed may be transferred, carried back or carried forward. The utilisation of the loss and unabsorbed CA is subject to the conditions discussed in Chapter 8 (at ¶8-100ff).

The "arbitrary" method

Where the ratio certificate has not been submitted, the assessment will be based on an arbitrary proportion of the amounts received or receivable from the carriage of passengers, livestock, mails, or goods shipped out from Singapore (s 27(4)). The rate is fixed at 5% of the gross earnings from outward shipments from Singapore. The amount so arrived at is taxed at 17% from YA 2010.

Where:

(i) an assessment has been based on the 5% method, and

(ii) the taxpayer submits the certificate within two years after the end of the relevant YA,

the assessment will be revised using the ratio certificate method (s 27(5)). The Comptroller may extend the two-year period.

Example 10

Muna Navigation Ltd ("Muna"), a company resident in Country A, operates ships in Singapore. Its gross receipts from outward shipment of cargo and passengers were $7,500,000 for the year 2014.

(a) Assuming Muna has not submitted a ratio certificate issued by Country A, Muna's Singapore tax position for YA 2015 will be:

	$
Gross receipts	7,500,000
5% deemed assessable profits (s 27(4))	375,000
Less: Exempt amount (s 43(6))	(152,500)
Chargeable income	222,500
Tax assessed at 17%	37,825.00
Less: 30% rebate (capped at $30,000)	(11,347.50)
Net tax payable	26,477.50

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(b) Assuming Muna subsequently submits to the Comptroller an acceptable ratio certificate issued by Country A by 31 December 2017 (as shown):

	$
Gross world shipping receipts	50,000,000
Adjusted world profits before CA	2,000,000
World CA	500,000
Muna's gross Singapore shipping receipts	7,500,000

Muna's revised tax position in Singapore for YA 2015 will be:

	$
Adjusted profit applicable to Singapore $\frac{\$2{,}000{,}000 \times \$7{,}500{,}000}{\$50{,}000{,}000}$	300,000
Less: Capital allowances applicable to Singapore $\frac{\$500{,}000 \times \$7{,}500{,}000}{\$50{,}000{,}000}$	(75,000)
	225,000
Less: Exempt amount (s 43(6)) (75% × $10,000 + 50% × $215,000)	(115,000)
Chargeable income	110,000
Tax assessed at 17%	18,700.00
Less: 30% rebate (capped at $30,000)	(5,610.00)
Net tax payable	13,090.00
Less: Tax previously payable under the "arbitrary method"	(26,477.50)
Tax refund	(13,387.50)

(c) Assuming that the ratio certificate issued by Country A in (b) above had shown an adjusted loss (not adjusted profit) of $2m before CA and that the other figures remained the same.

Muna's revised tax position in Singapore for YA 2015 will be:

	$
Loss available for carry forward	300,000
Capital allowances carried forward	75,000
Tax liability	Nil
Less: Tax previously payable under the "arbitrary method"	(26,477.50)
Tax refund	(26,477.50)

Note: From YA 2013 to YA 2015, companies qualify for a 30% tax rebate capped at $30,000 for each YA (s 92D).

Agent

The master of a ship or the captain of an aircraft owned or chartered by a non-resident is deemed to be the agent of the non-resident ship or aircraft owner for all income tax purposes (s 53(7)).

¶13-820 Transhipment and casual calls

Transhipment

A non-resident shipping or airline operator is specifically excluded from tax on any profits derived from the carriage of passengers, mail, livestock or goods in Singapore where such passengers, mail, livestock or goods are brought to Singapore solely for transhipment, or for transfer from one aircraft to another or from an aircraft to a ship or from a ship to an aircraft (s 12(2A)).

Casual calls

Where a ship or aircraft makes a call in Singapore that is considered by the Comptroller to be casual in nature, the profits derived from such a call would be exempt from Singapore tax provided future calls by the same owners are improbable (s 27(6)). For example, a ship not scheduled to call at Singapore was for some reasons (eg repairs, bad weather, etc) diverted to Singapore, and on leaving Singapore takes on cargo and passengers. The owner may not be subject to Singapore tax on the profits it makes from the freight or fares received or receivable in Singapore.

If a taxpayer provides satisfactory evidence that it has ceased business in Singapore, subsequent sailings would be "casual" (*X Shipping Enterprises Limited of Hong Kong v CIT, Singapore* (1950–1985) MSTC 569; (1972) 1 MLJ 8).

Based on its ordinary meaning, the word "casual" would mean the opposite of regularity or expected regularity. Where the visit of a ship, for the purposes of loading passengers, mail, livestock or goods, is non-recurring, or where there is no repetition or continuity, and where it is exceptional and isolated, the object of s 27(6) is considered satisfied.

¶13-830 Specific exemption from tax

Non-residents operating Singapore ships

A non-resident operating Singapore ships in international traffic is not liable to tax in Singapore. A Singapore ship is one which flies the Singapore flag and has a permanent certificate of registry issued under Singapore laws (s 13A(16)).

Tax treaties

The Singapore tax treaties provide the basis for assessing residents of the contracting countries who operate ships or aircraft. Some provide for total exemption from tax in Singapore on income derived from shipping or aircraft operations; others provide 50% exemption of the tax payable under either the ratio certificate basis or the arbitrary basis (see ¶13-810).

Specific agreements for shipping and/or aircraft income

Singapore has entered into the following agreements relating exclusively to shipping and/or aircraft income.

(a) Reciprocal exemption from tax of both international shipping and air transport income between Singapore and each of the following jurisdictions: the US, Hong Kong and Brazil

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Singapore has separate agreements with the US, Hong Kong and Brazil to mutually exempt the income of their shipping and airline companies from tax.

As the specific details of each agreement vary, the following merely sets out in broad terms some of the main provisions. For the full text of agreements, see the IRAS website www.iras.gov.sg.

For example, in the Singapore–US agreement, Singapore resident individuals (other than US citizens) and corporations controlled and managed in Singapore (other than corporations organised in the US) are not taxed in the US on the gross income derived from their international shipping or aircraft operations in the US. This exemption is granted on the basis of equivalent exemptions under US domestic tax law.

The scope of income that qualifies for exemption in the jurisdiction of source under the three agreements also covers:

- profits from rental on a bareboat charter basis of ships or aircraft (such rental must be incidental to the operation of ships or aircraft in international traffic, under Singapore's agreements with Hong Kong and Brazil)
- income from the rental of containers and related equipment used in international transport (where the rental is incidental)
- income from participation in international shipping or air transport pools, and
- gains from the alienation of ships or aircraft operated in international traffic.

In addition, the Singapore–Hong Kong agreement also exempts:

- income/profits from sales of tickets or similar documents and the provision of services connected with such transport (where the provision of services is incidental) (this type of profits is also exempt in Singapore's agreement with Brazil), and
- interest on funds deposited directly in connection with the operation of ships or aircraft in international traffic.

Furthermore, the agreement provides that remuneration in respect of employment exercised aboard a ship or aircraft operated in international traffic by a Singapore or Hong Kong enterprise shall be taxable in the respective country. However, both Singapore and Hong Kong have the right to tax the employment income of its residents in respect of an employment exercised aboard a ship or aircraft operated in international traffic.

(b) Reciprocal exemption from tax of international air transport income between Singapore and the United Arab Emirates (UAE), Saudi Arabia, Bahrain and Oman

Singapore has agreements with the UAE, Saudi Arabia, Bahrain and Oman for the reciprocal exemption from taxes on income arising from air transport business.

Under the Singapore–UAE agreement, income derived from the international operation of aircraft by an air transport enterprise of the UAE or Singapore is exempt from tax in the other Contracting State. The following are also exempt from tax:

- gains derived from the alienation of aircraft and related equipment
- interest on funds connected with the international operation of aircraft, and
- income derived from training schemes, management or other services rendered to an air transport enterprise in the other Contracting State.

Note that Singapore has a tax treaty with the UAE that exempts shipping profits of an enterprise of a Contracting State from tax in the other Contracting State. Such profits include income from:

- rental of containers and related equipment used in international transport, and
- sale of movable equipment used in the operation of ships.

Under the Singapore–Saudi Arabia agreement, income derived from the international operation of aircraft by a Singapore or Saudi Arabia enterprise is exempt from tax in the other country.

Under the Singapore–Bahrain agreement, Singapore and Bahrain air transport enterprises (namely Singapore Airlines and Gulf Air) are exempt from tax respectively in Bahrain and Singapore on income and profits derived:

- from the operation of aircraft in international traffic, and
- from any movable property used in the operation of such aircraft.

The Singapore–Oman agreement exempts income derived from the operation of aircraft in international traffic by a Singapore or Oman enterprise from tax in the other country.

An air transport enterprise of a Contracting State is also exempt from tax in the other Contracting State on:

- interest derived from deposits with banks where the deposits are from funds directly connected with the operation of aircraft in international traffic, and
- income and profit derived from training schemes/management and other services rendered to an air transport enterprise of the other Contracting State.

Salaries in respect of employment aboard an aircraft operating in international traffic are taxable in the state where the air transport company is managed or controlled.

(c) Reciprocal exemption from tax of international shipping income between Singapore and Chile

The Singapore–Chile agreement provides for reciprocal exemption from taxes of international shipping income. Singapore and Chilean shipping enterprises are exempt from tax on the gross income and profits derived from the international operation of ships in Chile and Singapore respectively. The exemption also applies to:

- income from the rental of ships, containers or related equipment, and
- income from participation in international shipping pools.

A "Singapore shipping enterprise" is a shipping enterprise in Singapore operated by the Singapore Government, tax residents of Singapore, or a shipping company controlled and managed in Singapore. A similar definition applies for "Chilean shipping enterprises".

¶13-840 Withholding tax on charter fees

A charterer is one who charters or hires a ship or aircraft from the owner and uses it for the purposes of carrying passengers, mail, livestock or goods. The liability of a non-resident charterer operating in Singapore is computed in the same manner and according to the same rules as those applicable to a non-resident shipowner.

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Chapter 13

Charter fees

The payment of charter fees to non-resident persons falls within the provisions of s 12(7)(d) (see ¶13-650).

The person paying charter fees to a non-resident person must withhold tax at the prescribed rate. The Comptroller has ruled that, depending on the tax status of the recipients and the payers, the following withholding tax rates will apply to time/voyage and bareboat charter fees:

	Time/voyage charter	*Bareboat charter*
• Recipient is resident in a treaty country. The "air and shipping transport" article of the treaty specifically covers bareboat charter fees and provides for:		
(a) full exemption of shipping and aircraft profits	Nil	Nil
(b) 50% exemption of shipping and aircraft profits.	1%	1%
• Recipient is resident in a treaty country and the "air and shipping transport" article of the treaty does not cover bareboat charter fees.	2%	2%
• Recipient is resident in a non-treaty country which the IRAS does not regard as a tax haven country.	2%*	2%*
• Recipient is resident in a country which the IRAS regards as a tax haven country.	2%* (from 1 February 2011)	2%* (from 1 February 2011)

* Before 1 February 2011, the IRAS labelled the following countries as tax havens for the purposes of withholding tax on charter fees (Singapore Society of Accountants Bulletin No 1/77):

> Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Hong Kong, Isle of Man, Jersey (Channel Islands), Liberia, Liechtenstein, Luxembourg, Netherlands Antilles, New Hebrides, Norfolk Island, Panama and Switzerland.
>
> (Note: If any of these jurisdictions has a tax treaty with Singapore, such as Switzerland, the treaty terms would apply in determining the appropriate withholding tax rate.)

From 1 February 2011, the list of tax haven countries is no longer applicable. The tax rate for charter fees paid to all non-residents from that date is therefore reduced from 3% to 2%, unless an applicable tax treaty provides for a tax exemption or lower tax rate.

By concession, there is no withholding tax in respect of container leasing fees payable to a non-resident person.

To further enhance Singapore's competitiveness as an international maritime centre and reduce business costs for ship charterers, exemption from withholding tax has been granted for bareboat, voyage and time charter payments made to non-residents, excluding PEs in Singapore, for the use of ships. The exemption applies for such payments made on or after 17 February 2012 and replaces the withholding tax rates tabulated above (s 45A(2)).

For payments made to a PE in Singapore, the PE in Singapore will continue to be assessed to tax on the charter fees received and will declare the payments in its annual income tax return.

¶13-850 Cable or wireless undertakings

The profits of a non-resident person who carries on a business of transmission of messages by cable or by any form of wireless apparatus are computed in the same manner as those of a non-resident shipowner (s 28).

¶13-900 Agents of non-residents

Chargeability of agents

Where a non-resident person does not have a fixed place of business (eg a branch) in Singapore but conducts its trading operations through an agent, that non-resident person may be assessable and chargeable to tax in the name of his agent, whether or not the agent has received the income (s 53(1)).

The Act does not define the term "agent". Generally, an "agent" includes any individual or company acting for, or on behalf of, another person. Thus, it is possible for a Singapore subsidiary (depending on the facts) to qualify as an agent of its non-resident parent.

Resident carrying on business with non-resident may be deemed agent of non-resident

A person may arrange his business transactions in Singapore in such a way that the profits, which would normally arise in Singapore, are moved out to a territory where the tax rate is lower. The most common way of doing this is by transfer pricing. Sections 53(2A)–53(3A) and 34D are intended to prevent such avoidance of tax.

Under s 53(2A), where:

(i) a non-resident person carries on business with a resident person, and

(ii) it appears to the Comptroller that owing to the close connection between them and to the substantial control the non-resident person exercised over the resident person, the course of business can be arranged and is so arranged such that the resident person derives no profits or less than the ordinary profits which might be expected to arise from that business,

the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were the non-resident person's agent.

The word "control" is not defined in the Act. However, applying its ordinary meaning, "control" may be regarded to exist where a person has the power to ensure that the affairs of the other person are in accordance with his own wishes. There are three situations in a trading relationship under which "substantial control" may arise:

(a) where the buyer is a person over whom the seller has control

(b) where the seller is a person over whom the buyer has control, and

(c) where both the buyer and seller are persons over whom some other third person has control.

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Where s 53(2A) applies, the market value of the goods or services provided by the resident person will be used instead of the non-arm's length values actually used in the business. Where arm's-length prices have been adopted in the business transactions between a non-resident and a resident person, s 53(2A)–53(3A) will not apply.

In any event, a non-resident person will be chargeable in the name of a broker or general commission agent or other agent only if such broker or agent is an authorised person carrying on the regular agency of the non-resident person (s 53(4)).

Brokers

Any isolated transactions carried out by a broker in the ordinary course of its business would not expose the non-resident buyer or seller to any danger of carrying on a business within Singapore.

In a treaty-country scenario, a *bona fide* broker who is akin to an "agent of an independent status" (see Chapter 14 at ¶14-100ff) will not expose the non-resident person to Singapore tax.

Collection of tax through appointed agent

To ensure collection of the tax due from a non-resident person, the Comptroller has the powers to appoint ("declare") a person an agent of a non-resident person (s 57). The appointed agent is answerable for all matters required to be complied with under the Act.

A person who is appointed an agent can object to the appointment by filing a written objection within 14 days (s 57(3)).

Section 56 grants the appointed agent the right to retain, out of money coming to his hands on behalf of another person, an amount sufficient to pay the tax on behalf of that other person. The agent is also indemnified against action taken by any person for all payments made by him to the Comptroller in accordance with the Act.

The appointed agent may be required to pay the non-resident's tax liability to the Comptroller out of money held by him or due by him to the non-resident person during the 90-day period after the notice of appointment has been received from the Comptroller (s 57(1) and 57(1A)).

The appointed agent of a non-resident may be required to pay the tax due from money owned by the non-resident which is held in a joint bank account, or from the proceeds of the sale of immovable property owned by the non-resident and one or more other joint owners. In such cases, it is presumed:

(i) that the holders of a joint bank account, including the non-resident, have an equal share of the money in the account, and

(ii) that the joint owners of immovable property, including the non-resident, share equally in the proceeds from the sale of the property (s 57(5A)).

The non-resident or any other joint owner of money from which tax is paid by the appointed agent may rebut the presumption.

Section 34D — anti-avoidance provision

Section 34D targets transfer pricing between related parties. It is not limited in scope to transactions between a resident person and a non-resident person. It came into operation on 29 December 2009 (see also Chapter 20, ¶20-200).

Under s 34D(1), where:

(i) two persons are "related parties", and

(ii) conditions are made or imposed between the two persons in their commercial or financial relations which differ from those which would be made if they were not related parties,

then any profits which would, but for those conditions, have accrued to one of the persons, and by reason of those conditions, have not so accrued, may be included in the profits of that person and taxed.

The term "related party", in relation to a person, means any other person who, directly or indirectly, controls that person, or is controlled, directly or indirectly, by that person, or where he and that other person, directly or indirectly, are under the control of a common person.

Where a person carries on business through a PE, s 34D(1) applies as if the person and the PE are two separate and distinct persons.

The scope of s 34D would appear wide enough to include the transactions falling within s 53 above. It also authorises the IRAS to make transfer pricing adjustments, including those in the context of related-party loans and related-party services, without the need to invoke the general anti-avoidance rule of s 33 (see ¶13-645 and Chapter 20).

Section 34D codifies the IRAS endorsement of the OECD's arm's length principle in transfer pricing (TP) matters. See also generally the IRAS e-Tax Guide "Transfer Pricing Guidelines" (2nd Ed), published on 6 January 2015. It consolidates the four previous e-Tax guides on transfer pricing:

- "Transfer Pricing Guidelines", published on 23 February 2006
- "Transfer Pricing Consultation", published on 30 July 2008 and revised on 6 August 2008
- "Supplementary Administrative Guidance on Advance Pricing Arrangements", published on 20 October 2008, and
- "Transfer Pricing Guidelines for Related Party Loans and Related Party Services", published on 23 February 2009.

The latest IRAS e-tax Guide took into account, among other things, feedback obtained in response to the IRAS consultation paper on Transfer Pricing Documentation published on 1 September 2014. Among other key updates and features, the Guide contains:

(a) more guidance on the arm's length principle, including other relevant aspects of a comparability analysis comprising of:

  - evaluating transactions on a separate or aggregate basis
  - selecting comparables

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- using multiple year data, and
- considering losses

(b) more guidance on TP documentation

(c) a flowchart of the TP consultation process (the former TP questionnaire which is outdated has been removed)

(d) more information on avoiding and resolving TP disputes, mutual agreement procedure and Advance Pricing Arrangement (APA) processes. Such information includes annual compliance report for APA, minimum information required for pre-filing meetings, and a sample letter of authority and APA agreement

(e) a new section on the IRAS position on TP adjustments

(f) clearer guidance on the application of the arm's length principle to related party services and related party loans, and

(g) a new section on the IRAS position regarding the attribution of profit to a PE.

On the last point (see s 14 of the Guide), the IRAS position is that if the following conditions are met, there will be no further attribution of profits to the PE and therefore no additional Singapore tax liability will arise for the foreign related party:

(i) The taxpayer receives an arm's length remuneration from its foreign related party that is commensurate with the functions performed, assets used and risks assumed by the taxpayer.

(ii) The remuneration paid by the foreign related party to the taxpayer is supported by adequate TP documentation to demonstrate compliance with the arm's length principle.

(iii) The foreign related party does not perform any functions, use any assets or assume any risks in Singapore, other than those arising from the activities carried out by the taxpayer.

CHAPTER 14

RELIEF FROM DOUBLE TAXATION

¶14-100 Introduction

The development of international trade and multinational corporations has increased the incidence of double (in some cases, multiple) taxation. Companies and individuals, looking beyond their own countries for business opportunities and investments, are concerned with this problem of double taxation. Whether they have existing overseas business operations or are planning to invest or set up business operations overseas, they would want to structure their operations at a minimum tax cost.

International double taxation of income arises when two or more countries impose tax on the same person in respect of the same income. Reasons for the double taxation of income include:

(a) Differences in each country's basis of taxation

Some countries tax only income arising within that country; others adopt the worldwide basis of taxation under which income is subject to tax wherever it arises. On the other hand, countries such as Singapore tax foreign income but only upon remittance.

(b) Conflict of source rules

Every country has the right to tax income that has its source within that country. Income may therefore be taxed in two countries on the basis that each country regards the income to be derived or deemed to be derived from its own domestic source.

(c) Differences in the definition of "residence"

It is possible for a person to be resident in more than one country because different countries adopt different definitions of "residence". For example, a company may be incorporated in the United States of America (US) but the exercise of its business may be controlled and managed in the United Kingdom (UK). Such a company will qualify to be resident in both the US and the UK (ie it is "dual resident"). It is therefore potentially subject to double taxation as the two countries tax their residents on income arising anywhere in the world.

To relieve taxpayers from the burden of double taxation, countries provide various reliefs under their domestic tax laws or tax treaties.

TAX TREATIES

¶14-200 Tax treaties

An important objective of a tax treaty is to avoid double taxation. A tax treaty achieves this objective in part by clarifying the allocation of domestic taxing rights on income from cross-border transactions. It therefore helps to create certainty in tax outcomes for the contracting countries and the taxpayers, thus promoting cross-border flows of labour and capital. The tax treaty also seeks to prevent international tax evasion by facilitating the exchange of information (EOI) between the tax authorities of the contracting countries.

In Singapore, s 49(1) of the *Income Tax Act (Cap 134, 2014 Revised Ed)* ("the Act") sets out the process by which a tax treaty acquires the force of law:

> "If the Minister by order declares that arrangements specified in the order have been made with the government of any country outside Singapore with a view to affording relief from double taxation in relation to tax under this Act and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in any written law."

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It follows that where there is a conflict between the provisions in a Singapore tax treaty and the domestic tax provisions, generally the tax treaty would prevail. However, a tax treaty cannot impose tax in Singapore where none exists under the Act. In Singapore, s 10(1) is the charging provision and governs the imposition of tax on income.

¶14-210 Main features of a tax treaty

The following gives a general overview of the main articles found in bilateral tax treaties.

Persons covered

This article typically provides that only a person who is resident in one or both of the contracting states will be covered by the treaty.

Taxes covered

The article spells out the types of taxes in each contracting country that are covered by the treaty.

General definitions

Some terms that are commonly used in the treaty are defined in the "General Definitions" article. They include "person", "company", and "enterprise". In recent treaties, the terms "resident of a contracting state" and "permanent establishment" are normally defined in separate articles.

Residence

This article spells out how the "residence" status of an individual and a company (among others) are to be determined. It also contains the criteria for resolving the issue of dual residence.

Permanent establishment

This article defines what constitutes a permanent establishment (PE). The definition of PE varies from treaty to treaty, depending on the contracting countries' policies and the extent of give-and-take in the treaty negotiations. The PE concept represents a minimum level of economic activity in the country of source that the non-resident enterprise must have as a condition for the country of source to be allowed to tax its business profits (see "Business Profits" below).

Income from immovable property

The country in which the immovable property is situated normally has the right to tax any income arising from the property.

Business profits

It is a generally accepted treaty principle that the business profits of an enterprise resident in one country (A) would not be taxed in the other country (B) unless a business is carried on by the enterprise through a PE in that other country (B). Where such a PE exists, the treaty allows Country B to tax the enterprise on its business profits but only an amount that is attributable to that PE. The article would also specify how the taxable profits of the PE are to be determined.

Shipping and air transport

Profits derived from the operation of ships and aircraft in international traffic would be taxable in the country of residence of the operator. Most treaties provide for full or partial exemption in the country of source.

Associated enterprises

The tax treaty allows the tax authorities of the contracting countries to adjust the profits between related companies where the commercial or financial arrangements between such companies are not at arm's length. Any adjustments made by one country to the amount of profits of a company may result in economic double taxation, as most treaties do not require the other country to automatically grant corresponding tax relief to the related company.

Dividends

Most treaties provide that the country of residence of the recipient has the right to tax the dividend income. The article would also specify whether the country of source (ie country of residence of the dividend-paying company) would exempt the dividend or subject it to a reduced rate of withholding tax (conditions may apply).

Under most treaties, where:

(a) the recipient of the dividend (being a resident of one country) carries on business in the other country (ie the country of source) through a PE situated therein, and

(b) the holding in respect of which the dividends are paid is effectively connected with such PE,

the dividends will be treated as business profits in the country of source. In this situation, the exemption or reduced withholding tax for dividends under the treaty will not apply to the recipient.

Interest

This article would specify whether the country of residence of the recipient has the right to tax the interest income. It may also provide for exemption or a reduced rate of withholding tax in the country of source (conditions may apply).

Under most treaties, where:

(a) the recipient (being resident of one country) carries on business in the other country (ie the country of source) through a PE situated therein, and

(b) the debt-claim in respect of which the interest is paid is effectively connected with such PE,

the interest will be treated as business profits in the country of source. In this situation, the exemption or reduced withholding tax for interest under the treaty will not apply.

Royalties

The country of residence of the recipient normally has the right to tax the royalty income. The article would specify whether the source country is allowed to tax the royalties and at what rate.

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The term "royalties" is usually defined in the tax treaties for purposes of the "Royalties" article. Under the typical definition, "royalties" means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial and scientific experience.

To qualify as "information concerning industrial, commercial and scientific experience", there must be imparting of secret or proprietary knowledge which has commercial value.

The typical "royalties" definition therefore includes know-how payments but excludes technical assistance fees.

Under most treaties, where:

(a) the recipient (being resident of one country) carries on business in the other country (ie the country of source) through a PE situated therein, and

(b) the right or property in respect of which the royalties are paid is effectively connected with such PE,

the royalties will be treated as business profits in the country of source. In this situation, the exemption or reduced withholding tax for royalties under the treaty will not apply.

It is a common requirement under the tax treaties that, to be entitled to the tax exemption or reduction, the recipient of the dividends, interest or royalties must be the beneficial owner of the income.

Independent personal services

Although this article has been deleted from the Organisation for Economic Co-operation and Development (OECD) Model treaty in the 2000 version, many treaties still retain it.

For income from independent personal services (ie professional service fees derived by an individual), the basic rule is that the country of residence of the person performing the services has the right to tax the income. Where, however, the person has a fixed base regularly available to him in the other country for the purpose of carrying out his activities, that other country would have the first right to tax the income.

Income from employment

For income from employment (the former treaty term is "dependent personal services"), the country of source is normally given the first right to tax it if the services are rendered in that country. The country of source is, however, required to exempt the income if some conditions are satisfied.

The article on "Income from Employment" is typically subject to the provisions of other articles such as "Directors' Fees", "Pensions", and "Government Service"; these latter articles therefore take priority in application over the former article.

Directors' fees

Directors' fees are taxable in the country in which the company paying the fees is resident.

Students

A student or business apprentice who is or was resident of one country and who is present in the other country (country of visit) solely for the purpose of his education or training will be exempt from tax in the country of visit on payments he receives for his maintenance, education and training. For the exemption to apply, those payments must arise from sources outside the country of source and he must meet some other conditions.

Elimination of double taxation

The article would provide for the methods of double taxation relief that the country of residence of the recipient would grant for the tax suffered in the country of source.

Non-discrimination

Basically, this article provides that nationals of one country are not to be subject in the other country to any taxation or connected requirement which is more burdensome than that to which nationals of the latter country in the same circumstances, in particular with reference to residence, are or may be subject. The scope of non-discrimination also extends to PEs.

Exchange of information

The article provides for the EOI between the tax authorities of the contracting countries. The information exchanged remains secret and is not to be disclosed to any person other than those, including a court, concerned with the enforcement, assessment, collection of taxes or determination of tax appeals. A contracting country is not obliged to disclose any information that relates to business, industrial or professional secrets.

Miscellaneous

Other treaty articles pertain to:

- the preservation of consular and diplomatic fiscal privileges
- assistance in the collection of taxes
- territorial extension
- the date on which the tax treaty becomes effective, and
- the procedures for the termination of the tax treaty.

¶14-220 Significance of residence and source

Determining residence

In a treaty-country scenario, the question of residence is important. For example:

(a) the country of source may grant tax exemption or reduction on income arising there under the treaty only if the income is derived by a resident of the other country

(b) only a resident of a country qualifies for credit for foreign tax suffered on income in the country of source.

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As mentioned in ¶14-100, the issue of dual residence may arise in a cross-border situation. To overcome this, a "tiebreaker" clause is normally included in a treaty to treat the dual resident person as resident only in one of the two contracting countries for purposes of the treaty.

Residence of individuals

Under the typical tiebreaker clause for a dual resident individual, the tests below are applied to him (in the order shown) until one of the tests is satisfied by only one country:

(a) the place where the individual has his permanent home

(b) the centre of vital interests, eg economic and personal ties

(c) the place of habitual abode, and

(d) the place where the individual is a national.

As a last resort, the treaty may provide that the issue of dual residence be resolved by mutual agreement between the two contracting countries.

Example 1

An Australian executive who exercises employment in Singapore for at least 183 days in a calendar year will be regarded as resident in Singapore under the quantitative test in s 2(1) of the Act. He may also be resident in Australia if:

(i) he is domiciled in Australia

(ii) his centre of vital interest is in Australia, or

(iii) he has a permanent home in Australia.

In such a case, his residency status for purposes of the Singapore–Australia tax treaty would be determined under the tiebreaker clause in that treaty.

Residence of companies

Generally, the treaty tiebreaker rule for a dual-resident company is the place where the effective management of the company is situated. Some tax treaties provide that where the place of effective management cannot be determined, the issue of dual residence is to be settled by mutual agreement.

Source-based taxation versus residence-based taxation

Countries which are at different stages in their economic development may have differing views as to whether the country of source or the country of residence should be allocated the first right or the exclusive right to tax the income concerned. For example, a capital exporting country may favour taxation at residence while a capital importing country may favour taxation at source.

The general view is that for most types of income (eg rental income from property and gains from the alienation of real property):

(i) the country of source should have the first right to tax, and

(ii) the country of residence should grant double taxation relief on such tax.

The following are some departures from the general application of the source principle in tax treaties:

(a) an enterprise of a contracting state is subject to tax in the country of source (ie the other contracting state) on its business profits only if it carries on a trade or business through a PE in that country

(b) remuneration from employment is exempt from tax in the source country if some conditions are satisfied

(c) full tax-exemption of royalties in the country of source (per the OECD Model), and

(d) profits from the operation of ships or aircraft in international traffic are usually allowed to be taxed only in the country of residence.

RELIEFS FROM DOUBLE TAXATION

¶14-310 Methods of relieving double taxation

In the treaty-country scenario, it is normally the country of source that has the first right to tax the income concerned. Double taxation in the hands of the recipient of the income is relieved by the country of residence.

The common methods of relieving double taxation that the country of residence adopts are:

(a) Credit method

Under the credit method, the country of residence grants a tax credit for the foreign tax suffered by the taxpayer on his income in the country of source. The taxpayer can claim this tax credit in calculating his home country tax payable. The tax credit may be provided for under domestic tax laws ("unilateral tax relief") or under tax treaties ("treaty or bilateral tax relief"). The amount of tax credit is normally restricted to the lower of tax paid/payable in the foreign country and the home country tax payable on that foreign income.

Where double taxation relief takes the form of a tax credit, it is also known as **double taxation credit** or **foreign tax credit (FTC)**.

(b) Exemption method

Under the exemption method, the country of residence relieves double taxation by granting tax exemption on income that has suffered tax in the country of source. The exemption may be given on the entire foreign income or part of the income. The exemption may be provided unilaterally or under the tax treaties.

(c) Deduction method

Under the deduction method, the taxpayer reports (in the tax computation in his country of residence) only the amount of foreign income after deducting foreign tax suffered. The double taxation on him is reduced as he consequently reports a smaller amount of taxable income.

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The effects of granting relief under the above methods are illustrated in Example 2.

Example 2

Assume that:

(i) the home country (ie the country of residence) of the company taxes foreign income upon remittance

(ii) the company does not have any local-source income

(iii) home country tax rate is 25.5%, and

(iv) foreign tax rate is 20%.

	A *Credit* $	*B* *Exemption* $	*C* *Deduction* $	*D* *Credit (tax sparing relief)* $
Foreign country tax position:				
Foreign-sourced income	1,000	1,000	1,000	1,000
Less: Foreign tax (20%)	(200)	(200)	(200)	0*
Net foreign income	800	800	800	1,000
Home country tax position:				
Foreign-sourced income	1,000	0	800	1,000
Chargeable income	1,000	0	800	1,000
Home country tax @ 25.5%	255	0	204	255
Less: Credit for foreign tax	(200)	—	—	(200)*
Net home country tax payable	55	0	204	55
Tax imposed on foreign income				
Foreign country	200	200	200	0
Home country	55	0	204	55
Total tax payable	255	200	404	55

Under the credit method (Column A), the company reports the foreign income (received) in its home country on a gross-up basis of $1,000 (ie $800/0.8) although it received the foreign income in cash of only $800. The remittance of foreign income to the home country results in additional tax payable as the domestic tax rate (25.5%) is higher than the foreign tax rate (20%).

Under the exemption method (Column B), there is no additional tax payable on the foreign income received in the home country. The foreign income is tax exempt and therefore excluded from chargeable income in the home country tax computation.

Under the deduction method (Column C), relief from double taxation is granted in the form of the company reporting only the amount of income (after deducting foreign tax) in his home country tax computation. The company has to pay an additional tax of $204 (25.5% × $800) in the home country. Where the company is in a tax-paying position (as in the example here), the deduction method generally results in a higher overall tax than the credit method and exemption method.

* Column D shows the tax position where:

(i) the foreign country provides full exemption on the income derived there under a tax incentive to promote its own economic or technological development, and

(ii) the home country grants a tax sparing credit for the tax foregone by the foreign country ($200) but deemed to have been paid.

As the tax sparing relief is granted in the form of a tax credit, it is also known as **tax sparing credit**.

Where full exemption is granted by the foreign country on the foreign income, there is in fact no double taxation suffered that has to be relieved. By granting tax sparing credit for the foreign tax deemed paid (at 20%), the home country collects tax of only $55. In effect, it foregoes collecting tax of $200 from the company. Another way to look at this is that the home country is indirectly providing the foreign country with financial assistance of $200.

¶14-315 Tax sparing relief

Tax sparing relief in the form of a tax credit may be provided in a tax treaty between a developed country (the country of residence) and a developing country (the country of source). A developing country normally gives tax incentives, such as tax holidays (ie full exemption from tax) or reduced tax rates, to encourage inflows of foreign investment and transfer of technology. The country of residence of the investor may grant him a tax sparing relief for the foreign tax *deemed* to have been paid in that developing country.

Without the tax sparing relief, the tax incentive given in the developing country would be frustrated if the company has to pay correspondingly more tax in his home country on the foreign income.

In Example 2 (Column D), if the home country has not granted any tax sparing relief, the total tax payable by the company would have been $255, the same amount payable under Column A. The only difference from Column A is that the tax of $200 foregone by the foreign country will now end up being collected by the home country ($255).

The tax sparing relief therefore preserves the attraction of the tax incentive granted by the foreign country.

In Example 2, note that the home country tax rate of 25.5% is higher than the foreign tax rate of 20%. The difference in tax rates is 5.5%. The grant of tax sparing credit therefore still gives rise to an additional tax of $55 (being 5.5% × $1,000) in the home country on the foreign income received.

The scenario in Example 3 is similar to Example 2 except that the home country tax rate is assumed to be 10%, which is lower than the foreign tax rate.

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Example 3

	A	B	C	D
	Credit	*Exemption*	*Deduction*	*Credit (tax sparing relief)*
	$	$	$	$
Foreign country tax position:				
Foreign-sourced income	1,000	1,000	1,000	1,000
Less: Foreign tax (20%)	(200)	(200)	(200)	0*
Net foreign income	800	800	800	1,000
Home country tax position:				
Foreign-sourced income	1,000	0	800	1,000
Chargeable income	1,000	0	800	1,000
Home country tax @ 10%	100	0	80	100
Less: Credit for foreign tax (credit for $200 foreign tax paid/deemed paid is restricted to $100)	(100)	—	—	(100)*
Net home country tax payable	0	0	80	0
Tax imposed on foreign income				
Foreign country	200	200	200	0
Home country	0	0	80	0
Total tax payable	200	200	280	0

Under the credit method (Column A), the remittance of foreign income to the home country does not result in additional tax payable as the domestic tax rate (10%) is lower than the foreign tax rate (20%).

Under the exemption method (Column B), there is no additional tax payable on the foreign income received in the home country. The foreign income is tax exempt and therefore excluded from chargeable income in the home country tax computation.

Under the deduction method (Column C), the company has to pay an additional tax of $80 (10% x $800) in the home country on the foreign income.

* Under the tax sparing relief (Column D), there is now no additional tax payable in the home country as the domestic tax rate is lower than the foreign tax rate.

Tax sparing relief may also be granted for income that is taxed at a reduced tax rate in the foreign country.

Example 4

Assume that Singapore has a tax treaty with Country X. Under the treaty, Country X imposes a 10% withholding tax on interest income sourced in it (Country X) and paid to a Singapore resident. The treaty allows a Singapore resident to claim FTC on Country X tax payable in respect of the interest and further provides that, for FTC purposes, the Country X tax imposed on the interest sourced in Country X is deemed to be 20%. Therefore, the Singapore resident recipient of the Country X interest can claim FTC based on the 20% tax rate — 10% for actual tax paid and an additional 10% for tax deemed paid. However, the amount of FTC claimable cannot exceed the amount of Singapore tax payable on the Country X interest.

In 2014, a Singapore tax resident company received $1.35m interest (net of 10% Country X withholding tax).

The tax position for year of assessment (YA) 2015 would be as follows:

	$
Singapore adjusted profit	2,000,000
Gross interest income from Country X ($1,350,000/0.9)	1,500,000
	3,500,000
Less: Exempt amount (s 43(6) maximum)	(152,500)
Chargeable income after exempt amount	3,347,500
Tax @ 17%	569,075
Less: Double taxation relief — 10% withholding tax	(150,000)
Tax sparing relief ($1,500,000 × 6.26%)	(93,900)
Tax payable	325,175
Less: 30% tax rebate (capped at $30,000)	(30,000)
Net tax payable	295,175

Note:

The amount of foreign tax relief claimable will be based on the lower of the Singapore effective tax rate of 16.26% ($569,075/$3,500,000) and the overall Country X tax rate of 20%. As the company can claim double taxation relief for the 10% withholding tax on interest income, the tax sparing relief would be restricted to 6.26% of the interest income.

¶14-320 Methods of relief from double taxation in Singapore

Under Singapore's territorial basis of taxation, foreign income is subject to tax in Singapore only if the foreign income is received in Singapore (s 10(1)). Section 10(25) clarifies the meaning of "received in Singapore from outside Singapore" as that expression is used in s 10(1). The 1995 Inland Revenue Authority of Singapore (IRAS) administrative statement must also be read with s 10(25) (see ¶3-300).

Certain foreign income received in Singapore is, however, exempt from tax under s 13(7A), 13(8) or 13(12) (subject to conditions).

The credit method of relieving double taxation is available under the Act and Singapore's tax treaties. Under the Act, unilateral tax credit can be claimed for certain foreign tax paid or payable (s 50A). Section 50, the credit code, governs the claim for FTC (see ¶14-350).

Up to YA 2011, the source-by-source basis of calculating FTC applies in Singapore. From YA 2012, the FTC pooling system is also available, subject to conditions.

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The deduction method is granted as an IRAS administrative concession (see ¶14-410).

The following methods are now discussed in turn:

(a) the **exemption method** under s 13(7A), 13(8) and 13(12) (see ¶14-330)

(b) the **credit method** — there are different aspects to this, namely, s 50 credit code, unilateral tax relief (UTR) under s 50A, FTC pooling, and the procedure to claim FTC (see ¶14-350 to ¶14-400), and

(c) the **deduction method** (see ¶14-410).

¶14-330 Tax exemption under s 13(7A), 13(8) and 13(12)

Tax exemption for individuals (s 13(7A))

Non-resident individuals are tax exempt on any foreign income received in Singapore. For a Singapore resident individual, all foreign income received in Singapore on or after 1 January 2004 is exempt from tax if the Comptroller of Income Tax (the "Comptroller") is satisfied that the tax exemption is beneficial to the individual (s 13(7A)). This exemption does not apply if the resident individual receives the foreign income through a partnership in Singapore. Foreign income received through a partnership in Singapore would be exempt from tax if it satisfies the conditions in s 13(8) read with s 13(9) (see below).

Tax exemption for foreign dividends, branch profits and service income (s 13(8))

Section 13(8) exempts a Singapore resident person from tax on dividends, branch profits and service income ("specified foreign income" in the IRAS e-Tax Guides) received in Singapore on or after 1 June 2003 if the following conditions listed in s 13(9) are satisfied:

(a) the specified foreign income is subject to tax of a similar character to income tax in the foreign country from which it is received

(b) in the year the specified foreign income is received in Singapore, the headline tax rate of the foreign country from which that income is received is at least 15%, and

(c) the Comptroller is satisfied that the tax exemption would be beneficial to the taxpayer.

A dividend is foreign-sourced if the company paying the dividend is not resident in Singapore.

The tax exemption for the foreign branch profits would apply only if the Singapore resident company has a registered branch in the foreign country. The exemption applies only to profits arising from a trade or business of the foreign branch; non-trade income such as interest income does not qualify.

For service income to be regarded as foreign-sourced, the IRAS' position is that the service must be provided by a person in the course of his trade, business or profession (TBP) through a fixed place of operation in the foreign country. The IRAS has clarified that a fixed place of operation:

(i) must have features of permanence, ie it is not of a temporary nature

(ii) must be at the disposal of the person on an ongoing basis, and

(iii) is being used regularly by the person to carry on his TBP of rendering services.

Generally a fixed place of operation would:

(i) refer to a place of management, an office, or a certain amount of floor space at the disposal of the person carrying on a TBP of rendering services through which the person, or his employees, performs the business activities, but

(ii) exclude a place of operation where only auxiliary or preparatory activities are performed.

Where a person does not have a fixed place of operation in the foreign country, the income derived from services rendered in the foreign country will be regarded as Singapore-sourced income even if the service is subject to tax in that country.

The IRAS e-Tax Guide "Tax Exemption for Foreign-Sourced Income" (2nd Ed), published on 31 May 2013, contains the following examples to illustrate whether a fixed place of operation exists abroad.

Scenario	*Is it a fixed place of operation?*
A Singapore engineering firm rents an office in country A merely for the purpose of supplying information regarding the firm's expertise.	No fixed place of operation in country A because the services rendered through the rented office in country A are services that are preparatory or auxiliary in character.
A Singapore law firm rents an office on a temporary basis in country B for the purpose of carrying out detailed research and study relating to the only case the firm is appearing before a court in country B.	No fixed place of operation in country B because the rented office is of a temporary nature.
A Singapore architect firm has a rented office in country C. The office is used by a team of architects and employees employed from country C to undertake one project after another on an on-going basis.	Yes. There is a fixed place of operation in country C because the office is at the disposal of the firm and has features of permanence (ie a team of employees undertaking projects on a long-term basis).

(See IRAS e-Tax Guide "Tax Exemption for Foreign-Sourced Income" (2nd Ed), published on 31 May 2013, which subsumes the following e-Tax Guides:

(i) "Tax Exemption for Foreign-Sourced Dividend, Foreign Branch Profits and Foreign-Sourced Service Income", published on 21 May 2003

(ii) "Tax Exemption for Foreign-Sourced Dividends, Foreign Branch Profits and Foreign-Sourced Service Income", published on 30 July 2004, and

(iii) "Supplementary Circular — Tax Exemption for Foreign-Sourced Dividends, Foreign Branch Profits and Foreign-Sourced Service Income", published on 31 May 2006.)

The following conditions for purposes of granting the s 13(8) exemption are now discussed in turn:

(a) "subject to tax"

(b) "headline tax rate of 15% or more", and

(c) "tax exemption would be beneficial".

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Subject to tax (s 13(9)(a))

For s 13(8) exemption purposes, income satisfies the "subject to tax" condition if tax has been paid, or tax (not being deferred tax) is to be paid on that income. The Minister for Finance ("the Minister") or his appointee may waive this condition, subject to such conditions as he may impose (s 13(9A) and 13(9B)).

The "subject to tax" condition is not regarded as satisfied if:

- the specified foreign income has been subject to tax in a foreign country but not in the country from which the income is received
- the specified foreign income after being taxed in the country of source has been moved to or invested in another country, or
- tax exemption has been granted for the specified foreign income under the tax law of the foreign country (but note the IRAS concession below).

Concession for "subject to tax" condition

Following representations from the business community, from 30 July 2004, the IRAS regards the "subject to tax" condition as met for the following foreign income:

- any specified foreign income that is exempt from tax in the foreign country from which the foreign income is received, if the exemption is a direct consequence of that country granting a tax incentive for carrying out substantive business activities in that country, or
- any foreign dividend that is paid out of income which is exempt from tax due to the tax incentive.

The IRAS' position is that "**substantive business activities**" refer to cases where:

(a) business activities are carried out through staff with certain expertise (eg managing director, chief financial officers, researchers involved in research and development (R&D) projects, factory managers, traders, etc), and

(b) actual expenditure is incurred to carry out the activities.

To qualify for this concession, taxpayers must submit the following documents together with their tax returns:

- A declaration that the foreign country has exempted the specified foreign income from tax because of substantive business activities carried on by the company in that country.
- A copy of the tax incentive certificate/approval letter issued by the foreign country. In lieu of this, a foreign dividend voucher stating that the dividend is exempt from tax for carrying out substantive business activities in that foreign country will suffice.

(See IRAS e-Tax Guide "Tax Exemption for Foreign-Sourced Income" (2nd Ed), published on 31 May 2013.)

"Subject to tax" condition in relation to foreign dividends

Where the specified foreign income is foreign dividends, the tax referred to in the "subject to tax" condition is:

- where the dividend-paying company is resident in the country from which the dividends are received, the tax paid in that country by that company in respect of its income out of which the dividend is paid (ie the underlying tax), and
- the tax paid on the dividends in the country from which the dividends are received (eg withholding tax) (s 13(10)).

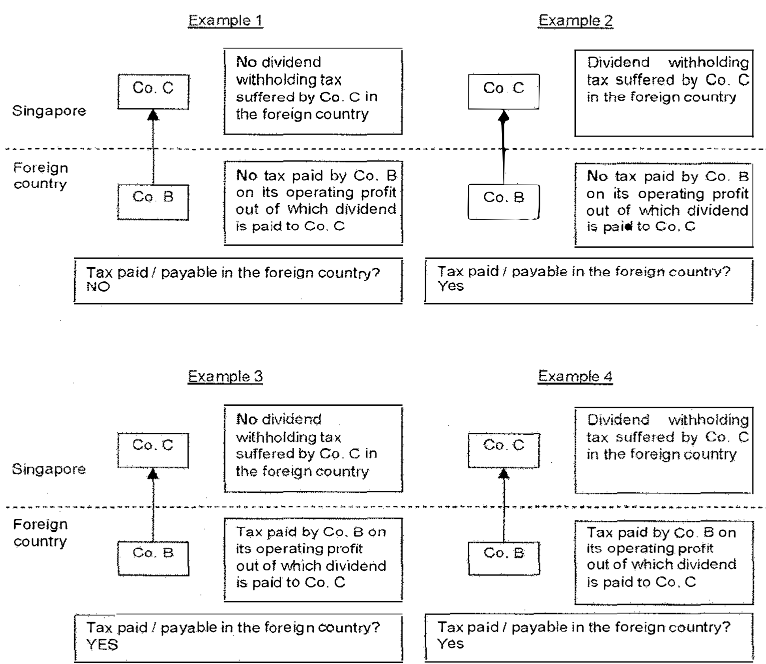
The IRAS regards the "subject to tax" condition as satisfied if tax is paid or payable at either of these levels.

Example 5 reproduces Annex B from the IRAS e-Tax Guide "Tax Exemption for Foreign-Sourced Income" (2nd Ed), published on 31 May 2013. It contains six diagrams to illustrate whether the "subject to tax" condition is satisfied in relation to foreign dividends received in Singapore. Example 5 reflects the IRAS' position that the "subject to tax" condition for purposes of granting s 13(8) exemption on the foreign dividends is regarded as satisfied so long as either a tax on dividend or the underlying tax has been paid (see diagrams 2 and 3 respectively). In determining whether underlying tax has been paid in this regard, one looks only at the level of the Singapore resident company's immediately-owned company in the foreign country (see diagrams 5 and 6).

Example 5

Annex B – Illustration on whether tax is paid or payable in a foreign country

The following examples illustrate whether there is tax paid or payable in a foreign country from which a foreign sourced dividend is received for the purposes of the tax exemption



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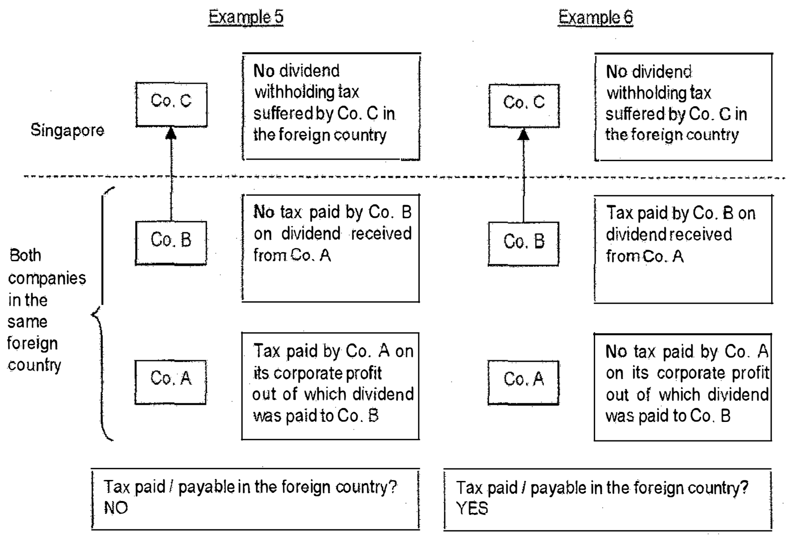
Annex B- continued



Administrative methods to prove that underlying tax has been paid on foreign dividends

The IRAS has set out two administrative methods either of which the Singapore resident person can adopt to prove that his foreign dividend satisfies the "subject to tax" condition, specifically, that foreign underlying tax has been paid. Whichever method is chosen has to be applied consistently for all future YAs. Any switch from one method to the other would require prior approval from the IRAS.

If a Singapore resident company has paid a dividend withholding tax in the country from which the dividend is received, it already satisfies the "subject to tax" condition for s 13(8) exemption purposes (as discussed above). There would be no need to apply Method 1 or Method 2 to take advantage of the exemption.

Method 1: Comparison of total dividends paid with total taxed profits

This method requires the company to keep track of the foreign payer company's total taxed income (including income subject to tax as capital gains) and the total dividends paid. Where the total amount of taxed income is ≥ the total amount of dividends paid up to and including the year of payment of the dividend in question, the IRAS will consider the "subject to tax" condition as met.

This method is suitable for a Singapore holding company with newly incorporated foreign subsidiary companies as the holding company would be able to keep track of all taxed income of each foreign subsidiary and the dividends paid by each subsidiary.

Method 2: Use of audited accounts of foreign payer company

The IRAS will consider the "subject to tax" condition as met where the foreign payer company's audited accounts for the financial period ending in the year prior to the year when the dividend is received in Singapore show a positive current year tax expense, excluding any deferred tax expense. This method would be suitable for portfolio investors (ie "having less than 100% ownership in the foreign payer company", as stated in the IRAS e-Tax Guide).

Other methods

The taxpayer can also choose any other method if he can prove to the IRAS satisfactorily that the "subject to tax" condition has been met.

(See IRAS e-Tax Guide "Tax Exemption for Foreign-Sourced Income" (2nd Ed), published on 31 May 2013.)

Headline tax rate ≥ 15% (s 13(9)(b))

The headline tax rate of a foreign country refers to the highest corporate tax rate prevailing in that country. It is not necessarily the actual tax rate imposed on that foreign income by the foreign country. As long as the headline tax rate of the foreign country is at least 15% in the year the specified foreign income is received in Singapore, that foreign income would satisfy this condition for the s 13(8) exemption.

Some foreign tax jurisdictions may have special tax legislation (apart from its main tax legislation) that imposes tax on the specified foreign income. Where the specified foreign income received in Singapore:

(a) is chargeable to tax under the special tax legislation of the foreign tax jurisdiction that is independent of its main tax legislation

(b) the special tax legislation imposes tax at a rate lower than the highest rate applicable to other companies in that jurisdiction under the main tax legislation, and

(c) the application of the lower tax rate is not pursuant to a tax incentive granted for carrying out substantive activities in that jurisdiction (eg special tax legislation enacting incentives for income derived from carrying out manufacturing activities in Special Economic Zones),

the IRAS has clarified that the headline tax rate for s 13(8) exemption purposes would be the highest of the rates stipulated in the special tax legislation instead.

(See IRAS e-Tax Guide "Tax Exemption for Foreign-Sourced Income" (2nd Ed), published on 31 May 2013.)

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Tax exemption would be beneficial (s 13(9)(c))

This third condition for the s 13(8) exemption to apply may, at first sight, appear to be redundant. Isn't exemption always beneficial to the Singapore resident person? The answer is no, for at least the following two reasons:

(1) Under some of Singapore's tax treaties, a Singapore resident person may qualify for tax exemption or reduction on income arising in the country of source only if that income is received in Singapore and subject to tax in Singapore. Section 13(8) exemption on the foreign income received in Singapore would fail such a "subject to tax" condition in the treaty concerned, and

(2) With the introduction of FTC pooling basis from YA 2012, it is possible that the s 13(8) exemption may result in a higher tax payable than FTC pooling (see ¶14-365 and Examples 6 and 7).

General tax exemption under s 13(12)

A Singapore resident person who intends to repatriate from any country any foreign income that does not qualify for tax exemption under s 13(8) can apply to the Minister for full or partial tax exemption on the foreign income. The Minister may approve the application if he is of the opinion that the repatriation of the foreign income would help to promote or enhance the economic or technological development of Singapore (s 13(12)). Alternatively, he may grant a concessionary rate of tax on the foreign income instead.

In response to representations from the business community regarding the difficulties of satisfying the s 13(8) "subject to tax" condition, the IRAS has set out six scenarios under which the s 13(12) tax exemption may be granted on the specified foreign income received in Singapore if the following conditions are satisfied:

(i) the taxpayer must be able to track the source of income

(ii) there is no round tripping of locally-sourced income via the overseas investment, and

(iii) the taxpayer receiving the income in Singapore is not a shelf company.

Where the foreign income received in Singapore by a taxpayer does not fall within any of the six scenarios, the taxpayer can still make an application under s 13(12) giving reasons why exemption should be granted. Such a taxpayer could be a company or a listed infrastructure registered business trust (RBT) (see also the 2014 Budget announcement below). The IRAS has indicated that exemption would be granted if the repatriation of such income would generate economic benefits for Singapore.

(See IRAS e-Tax Guide "Tax Exemption under Section 13(12) for Specified Scenarios, Real Estate Investment Trusts and Qualifying Offshore Infrastructure Project/Asset" (2nd Ed), published on 30 May 2014.)

The six scenarios are given below:

Scenario A

Where the specified foreign income received in Singapore originated in a foreign tax jurisdiction from which the income was received and that tax jurisdiction had a headline tax rate of at least 15%, but ***no*** tax was paid in that tax jurisdiction because:

(a) the *foreign dividend* was paid out of:

  (i) capital gains which were not subject to tax in that tax jurisdiction

  (ii) underlying profits derived from carrying out substantive business activities in that tax jurisdiction but were not subject to tax due to:

   - set-off of unutilised losses or capital allowances (CAs), or
   - the rules under a consolidation regime of that tax jurisdiction.

(b) the *branch profits* were not subject to tax in that tax jurisdiction because:

  (i) the profits were capital gains which are not subject to tax in that tax jurisdiction, or

  (ii) of set-off of unutilised losses or CAs.

(c) the *service income* was not subject to tax in that tax jurisdiction due to set-off of unutilised losses or CAs.

Scenario B

Where:

(a) the specified foreign income received in Singapore originated from carrying out substantive business activities in the foreign tax jurisdiction from which the income was received

(b) that tax jurisdiction had a headline tax rate of *lower than* 15%

(c) that tax jurisdiction was a party to an avoidance of double taxation agreement (DTA) concluded and signed with Singapore but pending ratification, ie had not been effected in law, and

(d) tax was paid in that tax jurisdiction.

Scenario C

Where:

(a) the specified foreign income received in Singapore originated from carrying out substantive business activities in the foreign tax jurisdiction from which the income was received

(b) that tax jurisdiction had a headline tax rate *lower than* 15%

(c) that tax jurisdiction was a party to a DTA concluded and signed with Singapore but pending ratification, ie had not been effected in law, and

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(d) *no* tax was paid in that tax jurisdiction because:

(i) the *foreign dividend* was paid out of:

- capital gains which were not subject to tax in that tax jurisdiction
- underlying profits derived from carrying out substantive business activities in that tax jurisdiction but were not subject to tax due to:
  - set-off of unutilised losses or CAs
  - the rules under a consolidation regime of that tax jurisdiction, or
  - the foreign tax jurisdiction granting a tax incentive for carrying out substantive business activities in that tax jurisdiction.

(ii) the *branch profits* were not subject to tax in that tax jurisdiction because:

- the profits were capital gains which were not subject to tax in that tax jurisdiction
- of set-off of unutilised losses or CAs, or
- the foreign tax jurisdiction granting a tax incentive for carrying out substantive business activities in that tax jurisdiction.

(iii) the *service income* was not subject to tax in that tax jurisdiction due to:

- set-off of unutilised losses or CAs, or
- the foreign tax jurisdiction granting a tax incentive for carrying out substantive business in that tax jurisdiction.

Scenario D

Where the specified foreign income received in Singapore originated from carrying out substantive business in a foreign tax jurisdiction (Country A) with a headline tax rate of at least 15% and tax was paid in this tax jurisdiction, but was moved to or invested in another foreign tax jurisdiction(s) (Country B and then Country C) that did not levy any tax on such income before or when the income was remitted back to Singapore from the other tax jurisdiction (ie Country C).

Scenario E

Where the foreign dividend received in Singapore was paid out of income that did not originate in the foreign tax jurisdiction from which the dividend income was received (Country A), but out of income that originated from carrying out substantive business activities in another foreign tax jurisdiction that had a headline tax rate of at least 15% (Country E) and tax was paid on the originating income in Country E. Dividend was paid out of the originating profit to another country in another foreign tax jurisdiction (Country D) that in turn paid dividend to another company in other foreign tax jurisdiction, and so on (Countries C and B), before being used to pay the dividend to the payer company in Country A.

Scenario F

Where the foreign dividend received in Singapore was paid out of income that did not originate in the foreign tax jurisdiction from which the dividend income was received (Country A), but out of originating profit derived from carrying out substantive business activities in another foreign tax jurisdiction that had a headline tax rate of at least 15% (Country E). The dividend was paid out of the originating profit to another country in another foreign tax jurisdiction (Country D) which in turn paid dividend to another company in other foreign tax jurisdiction, and so on (Countries C and B), before being used to pay the dividend to the payer company in Country A.

No tax was paid on this income in all these foreign tax jurisdictions (ie Countries A to E) as:

(a) the originating profit was not subject to tax in Country E because:

  (i) it was a capital gain

  (ii) of set-off of unutilised losses or CAs

  (iii) of the rules under a consolidation regime of Country E, or

  (iv) it was exempt from tax as a consequence of Country E granting a tax incentive for carrying out substantive activities in Country E, and

(b) the dividend received in Countries A, B, C and D which was paid out of the originating profit from carrying out substantive business activities (and thereafter used to pay the foreign dividend received in Singapore) was not subject to tax in Countries A, B, C and D respectively due to:

  (i) the participation exemption regime of Countries A, B, C or D, or

  (ii) the tax system of Countries A, B, C or D not taxing foreign-sourced dividends received in Countries A, B, C or D respectively.

(For useful diagrams illustrating some of the above scenarios, please see IRAS e-Tax Guide "Tax Exemption under Section 13(12) for Specified Scenarios, Real Estate Investment Trusts and Qualifying Offshore Infrastructure Project/Asset" (2nd Ed), published on 30 May 2014.)

Under s 13(12), the order for tax exemption or reduction:

(i) may be general or specific, and

(ii) may prescribe the conditions for the tax exemption or reduction to be granted.

These conditions need not, however, be included in the order for purposes of publication in the *Gazette* (s 13(13) and 13(13A)).

2014 Budget announcement

To provide listed infrastructure RBTs in Singapore with more tax certainty so as to facilitate the listing of more infrastructure assets in Singapore, the Government announced that s 13(12) exemption for listed infrastructure RBTs will be enhanced as follows:

(a) The specified scenarios under s 13(12) will be expanded to cover dividend income originating from foreign-sourced interest income so long as it relates to the qualifying offshore infrastructure project/asset. The IRAS will continue to verify that the qualifying conditions are met for all specified scenarios, and

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(b) Interest income derived from a qualifying offshore infrastructure project/asset will automatically qualify for s 13(12) exemption if certain conditions are met. With the change, the IRAS will verify that the qualifying conditions are met instead of the current case-by-case approval by the Minister.

The following changes pertain to s 13(12) exemption (see IRAS e-tax Guide "Tax Exemption under Section 13(12) for Specified Scenarios, Real Estate Investment Trusts and Qualifying Offshore Infrastructure Project/Asset" (2nd Ed), published on 30 May 2014):

(a) Change to timeline for submitting the s 13(12) declaration form:

(i) (Existing practice) Where the specified foreign income is received in Singapore during a basis period that relates to YA 2013 and earlier: the form has to be submitted to the IRAS before the specified foreign income is received in Singapore.

(ii) (Revised practice) Where the specified foreign income is received in Singapore during a basis period that relates to YA 2014 or subsequent YA: the form has to be submitted by the tax return filing due date for the YA relating to the basis period in which the specified foreign income from each source is received in Singapore and tax exemption is claimed for the first time.

This means, eg that a company that first receives a recurring stream of specified foreign income from a particular source during the year ended 31 December 2014 can submit the s 13(12) declaration form to the IRAS by 30 November 2015, the due date for filing the tax return. The form need not be submitted again if the same type of specified foreign income from the same source is received in Singapore in the next financial year.

(b) Aligning s 13(12) exemption for Singapore Listed Real Estate Investment Trusts (REITs) with that for companies and qualifying offshore infrastructure project/asset S-REITs (ie REITs that are listed on SGX) currently enjoy an income tax concession.

Section 13(12) exemption will apply to S-REIT foreign income (ie foreign dividend income, interest income, trust distributions and branch profits) received by the trustee of an S-REIT or its wholly-owned Singapore resident subsidiary in respect of any overseas property which:

(i) is acquired, directly or indirectly, by the trustee of the S-REIT or its wholly owned Singapore resident subsidiary on or before 31 March 2015, and

(ii) continues to be beneficially owned, directly or indirectly, by the trustee of the S-REIT or its wholly owned Singapore resident subsidiary after 31 March 2015.

With the alignment, S-REIT foreign income received in Singapore after 31 March 2015 will be granted the s 13(12) exemption so long as all the conditions for the exemption are met.

Unless specifically revoked earlier, the tax exemption scheme for infrastructure foreign income will expire on 31 March 2017.

2015 Budget announcement

To continue to promote the listing of REITs in Singapore and strengthen Singapore's position as a REITs hub in Asia, the above income tax concession (as well as the current concession of imposing a 10% reduced tax rate for non-resident non-individual investors) will apply so long as the overseas property is acquired, directly or indirectly, by the trustee of the S-REIT or its wholly owned Singapore resident subsidiary on or before 31 March 2020.

[Aside: Currently, stamp duty remissions apply on the transfer of a Singapore immovable property to a S-REIT and on the transfer of 100% of the issued share capital of a Singapore incorporated company that holds immovable properties situated outside Singapore to the S-REIT. The objective of these stamp duty concessions was to enable the industry to acquire a critical mass of local assets as a base from which the REITs can expand abroad. As this objective has been achieved, the stamp duty concessions will be allowed to lapse after 31 March 2015.]

For completeness, we now briefly refer to the one-year moratorium (see below) and the Commonwealth tax relief (repealed), before examining the s 50 credit code.

One-year moratorium

In the mid of the global financial crisis that was unfolding in late 2008 and early 2009, the 2009 Budget announced that the conditions for tax exemption of **all** foreign income received in Singapore would be temporarily lifted. This measure was intended to help businesses make the best use of their foreign income to meet their financing needs in Singapore during that difficult time. Specifically, all foreign income earned or accrued outside Singapore before 22 January 2009 and received in Singapore during the one-year period 22 January 2009 to 21 January 2010 (both dates inclusive) was exempt from tax (s 13(8A)).

The following income was therefore exempt in Singapore if it was received in Singapore during that one-year period:

(i) any foreign income received in Singapore by a Singapore resident individual through a partnership in Singapore, and

(ii) any foreign income (including interest, royalties, rental and any other income falling outside the scope of the s 13(8) exemption) received in Singapore by a Singapore resident company.

(See IRAS e-Tax Guide "Temporary Liberalisation of Income Tax Exemption for Foreign-Sourced Income received in Singapore from 22 January 2009 to 21 January 2010", revised on 7 August 2009.)

¶14-340 Commonwealth tax relief

Over the years, Singapore's tax treaty network (see ¶14-510) and the scope of foreign income that qualifies for UTR under s 50A (see ¶14-360) have been steadily expanded. Commonwealth tax relief, a form of double taxation relief granted for income received in Singapore from Commonwealth countries, consequently became less important in practice. It was repealed with effect from YA 2010.

For details on the Commonwealth tax relief, please refer to the 2011/12 edition of this book.

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¶14-350 Section 50 credit code

The s 50 credit code sets out:

(i) the conditions to qualify for the credit method of relieving double taxation in Singapore, and

(ii) the manner in which the credit method is to be applied.

Section 50 applies to foreign income received in Singapore that qualifies for either treaty relief or s 50A UTR.

The conditions and features of s 50 are:

(a) Only a person resident in Singapore for that YA can claim FTC under the tax treaty or under s 50A.

(b) The claimant must have suffered foreign tax on the foreign income. The foreign income must be reported in the Singapore tax computation on a gross-up basis (see Example 2, Column A).

(c) The amount of allowable FTC is restricted to the lower of foreign tax paid/payable on the foreign income or the Singapore tax payable on that foreign income after permissible deductions under the Act. It follows from this restriction rule that:

(i) Where the Singapore effective tax rate (SETR) is equal to or lower than the foreign tax rate, the credit would be based on the SETR.

(ii) Conversely, where the SETR is higher than the foreign tax rate, the credit would be based on the foreign tax rate.

The SETR for a company is calculated as:

$$\frac{A}{B}$$

where:

A	=	Singapore tax payable before any tax credit or rebates (ie chargeable income after deducting exempt amount × prevailing corporate tax rate)
B	=	Chargeable income before deducting exempt amount

(d) Up to YA 2011, the calculation of the FTC on the foreign income is strictly on a source-by-source basis only. This means that the FTC for any item of income received in Singapore from Country A is restricted to the lower of the foreign tax paid/payable in Country A on that income or the Singapore tax payable on that income. Where the foreign tax paid in Country A exceeds the amount of FTC that can be claimed, the excess foreign tax paid is unrelieved; in other words, the excess foreign tax cannot be used to set off against the Singapore tax payable on any other foreign income whether from country A or another country.

With effect from YA 2012, the FTC pooling basis applies and it becomes possible for a Singapore resident person who satisfies the applicable conditions to claim FTC on foreign income he receives in Singapore on a pooled basis. The source-by-source basis continues to apply from YA 2012 under some circumstances (see ¶14-365).

(e) FTC available cannot be used to set off against Singapore tax on Singapore-sourced income.

(f) Claims for FTC have to be made no later than two years from the end of the YA in which the foreign income is chargeable to tax in Singapore (s 50(9)).

(g) If a Singapore resident company elects that the credit method not be applied to his income for any YA, he would in practice be taxed on the foreign income using the deduction method for that YA (s 50(8)). The credit method is therefore not mandatory (see ¶14-410).

¶14-360 Unilateral tax relief under s 50A

A Singapore resident person who does not qualify for tax exemption or treaty relief on any of the following income received in Singapore can claim UTR under s 50A(1). UTR was first introduced in Singapore in the mid-1980s to encourage local businesses to venture abroad and develop an external wing for the economy. Over the years, the list of qualifying foreign income has expanded to include:

(a) income derived from any professional, consultancy and other services rendered in that territory outside Singapore

(b) royalty income derived from that territory where the payment is not:

  (i) borne, directly or indirectly, by a person resident in Singapore or a PE in Singapore (except in respect of any business carried on outside Singapore through a PE outside Singapore), or

  (ii) deductible against any Singapore-sourced income

(c) dividends

(d) employment income (note that employment income is now exempt under s 13(7A))

(e) profits derived by an overseas branch of a Singapore resident company

(f) income derived from any trade or business carried on in that territory through a PE in that territory

(g) discount or premium from debt securities or interest derived from that territory where the payment is not:

  (i) borne, directly or indirectly, by a person resident in Singapore or a PE in Singapore (except in respect of any business carried on outside Singapore through a PE outside Singapore), or

  (ii) deductible against any Singapore-sourced income

(h) rent and other income ancillary to holding immovable properties in that territory, and

(i) all other gains or profits of an income nature derived from that territory.

Note that items (f) to (i) qualify for UTR only from YA 2009.

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Foreign dividends

The following paragraphs apply to foreign dividends received in Singapore where exemption under s 13(8) does not apply.

Dividend paid by a non-treaty-country resident company

A Singapore resident person who receives in Singapore foreign dividends from a non-treaty country can claim UTR for the tax on the dividends regardless of the percentage of the shareholding he owns in the foreign dividend-paying company. He can also claim UTR for the underlying tax suffered in that country (which is on top of the tax on dividend) if he owns at least 25% of the total number of issued shares of the dividend paying company (s 50A(2)), or has otherwise been granted a waiver of this 25% requirement by the Minister (on application).

Dividend paid by a treaty-country resident company

Under all Singapore tax treaties, a resident company can claim FTC for foreign dividend withholding tax regardless of the percentage of shareholding it owns in the foreign company. However, a few treaties do not provide for tax relief for underlying tax. In these cases, the Singapore resident company can still claim UTR for the underlying tax if:

(i) it satisfies the 25% share ownership requirement above (s 50A(3)), or

(ii) it does not satisfy the requirement in (i) but the Minister grants it a waiver of that requirement, upon application (s 50A(6)).

Restriction on availability of other FTC

A person who is granted UTR is not entitled to Commonwealth tax relief (applicable up to YA 2009) or to treaty relief on the same income (s 50A(5)).

¶14-365 Foreign tax credit pooling

As explained in ¶14-350, up to YA 2011, the amount of FTC is computed on a "source-by-source" (referred to as "source-by-source and country-by-country" basis in the IRAS e-Tax Guide "Foreign Tax Credit Pooling", published on 27 December 2013) for each item of foreign income received in Singapore. The FTC granted is restricted to the lower of the foreign tax paid/payable or the Singapore tax payable on that foreign income. Where the foreign tax paid exceeds the Singapore tax payable on that same foreign income, the excess cannot be used to set off against the Singapore tax payable on other taxable foreign income.

From YA 2012, the FTC pooling scheme came into effect. The scheme applies to resident persons and will:

(i) give them greater flexibility in their claim for FTC (thereby reducing their Singapore taxes payable on foreign income received in Singapore), and

(ii) simplify tax compliance for them.

Under FTC pooling, the amount of FTC granted will be calculated on a pooled basis. It is restricted to the lower of:

(i) the pooled foreign taxes paid on the pooled foreign income, and

(ii) the pooled Singapore tax payable on such foreign income.

Based on the language of s 50C and the IRAS e-Tax Guide, a company can elect FTC pooling if the following conditions are satisfied:

(i) Foreign income tax has been paid on the foreign income in the foreign jurisdiction from which the foreign income is *derived*

(ii) The headline tax rate of the foreign jurisdiction from which the foreign income is *derived* is at least 15% at the time the foreign income is received in Singapore

(iii) There is Singapore tax payable on the foreign income, and

(iv) The taxpayer is entitled to claim FTC on that foreign income *(this condition means that the company must be a Singapore resident)*.

If there is no election for FTC pooling or relevant FTC computation, the IRAS will apply the source-by-source basis in calculating the FTC to be allowed.

The following rules apply under FTC pooling:

(i) There is no restriction on the types of foreign income or foreign jurisdiction from which the income is *derived*.

(ii) The claim under FTC pooling on any source of foreign income is made on each YA basis.

(iii) If foreign income qualifies for both s 13(8) exemption and FTC pooling, the company is allowed to elect, for each YA:

- the s 13(8) exemption
- FTC pooling, or
- source-by-source basis

(iv) (Where the foreign income to be pooled includes foreign dividend) if there is no foreign tax paid on the foreign dividend but the foreign company paying the dividend has paid tax on the income out of which the dividend is declared (ie the underlying tax), the foreign tax paid which is to be pooled includes the proportionate amount of such underlying tax paid if the conditions under the relevant tax treaty or s 50A(3) for claiming UTR on the underlying tax are met.

(Note: Recall that, under s 50A(3), the Singapore resident company qualifies for UTR for the foreign underlying tax (this is on top of UTR for the dividend withholding tax) if it owns at least 25% of the total number of issued shares of the foreign company (see ¶14-360). Where the foreign company is resident in a treaty-country, the applicable treaty may stipulate a reduced shareholding requirement for granting relief on the underlying tax.)

FTC pooling does not apply to:

(i) foreign income received in Singapore that is exempt in the foreign country

(ii) foreign income that qualifies for exemption in Singapore other than under s 13(8) (eg s 13(12) exemption), or

(iii) a Singapore resident company that incurs a loss and is therefore not tax-paying.

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Example 6 shows how FTC pooling is applied.

Example 6: FTC Pooling

(Adapted from an example in Annex 1, IRAS e-Tax Guide "Foreign Tax Credit Pooling", published on 27 December 2013.)

The following information pertains to Olive Branch (S) Pte Ltd (OBS), a manufacturing company, for YA 2015. Assume that OBS owns 100% of the shares in its subsidiaries resident in Country X and in Country Y.

Both Countries X and Y adopt a one-tier system of corporate taxation.

	Headline tax rate of country	***Amount ($)***	***Foreign tax paid ($)***
Tax-adjusted trade income		2,000,000#	
Foreign income:			
Dividend (Country X)	20%	80,000*	16,000 (underlying tax)
Dividend (Country Y)	10%	100,000*	10,000 (underlying tax)
Interest (Country Z)	15%	200,000*	20,000 (interest withholding tax is 10%)

This amount is after deduction of CAs (where applicable).

* Based on the information presented, these three amounts of $80,000, $100,000 and $200,000 refer to the grossed-up amounts. The amounts (net of applicable foreign taxes) would have been $64,000, $90,000 and $180,000 respectively. Assume that there are no deductible expenses claimed.

Required:

Calculate OBS's tax payable for YA 2015, assuming that OBS elects FTC pooling.

Solution:

(Note: The dividend from Country Y does not qualify for FTC Pooling because the headline tax rate in Country Y is less than 15%.)

Tax computation for YA 2015:

	$	
Tax-adjusted trade income	2,000,000	
Dividend (Country X)	80,000	(A)
Dividend (Country Y)	100,000	(B)
Interest (Country Z)	200,000	(C)
Statutory income = Chargeable income before exempt amount	2,380,000	(D)
Less: Exempt amount	152,500	
Chargeable income	2,227,500	

		$	
Tax @ 17%		378,675	(E)
Less:	FTC under pooling system	(36,000)	(see below)
	FTC not under pooling system	(10,000)	(see below)
		332,675	
Less: 30% tax rebate (capped at $30,000)		(30,000)	
Net tax payable		302,675	

Calculation of FTC under FTC Pooling

Singapore tax payable on foreign income:

			$
–	Dividend (X): (A/D) × E = (80,000/2,380,000) × $378,675	=	12,728.57
–	Interest (Z): (C/D) × E = (200,000/2,380,000) × 378,675	=	31,821.43
			44,550.00
	Total foreign tax paid (16,000 + 20,000)	=	36,000
	FTC = $36,000 (being lower of $44,550 and $36,000)		

Calculation of FTC on dividend from Country Y

Singapore tax payable on dividend (Y):

		$
(B/D) × E = (100,000/2,380,000) × 378,675	=	15,910.71
Foreign tax paid	=	10,000
FTC = $10,000 (being the lower of $15,910.71 and $10,000)		

Example 7: No FTC pooling

Assume that the facts are the same as those in Example 6. OBS, however, does not elect FTC pooling.

Required:

Calculate OBS' tax payable for YA 2015.

Solution:

Country X dividend is the only foreign income that qualifies for the s 13(8) exemption.

Country Y dividend does not qualify for s 13(8) exemption because the headline tax rate condition is not satisfied.

Country Z interest does not qualify for s 13(8) exemption because interest is not one of the three specified foreign incomes under s 13(8).

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Tax computation for YA 2015:

	$
Tax-adjusted trade income	2,000,000
Dividend (Country X) (s 13(8) exemption)	0
Dividend (Country Y)	100,000
Interest (Country Z)	200,000
Statutory income = Chargeable income before exempt amount	2,300,000
Less: Exempt amount	152,500
Chargeable income	2,147,500
Tax @ 17%	365,075
Less: FTC (Dividend from Country Y) (10% × $100,000)	(10,000)
FTC (Interest from Country Z) (10% × $200,000)	(20,000)
	335,075
Less: 30% tax rebate (capped at $30,000)	(30,000)
Net tax payable	305,075

In OBS's scenario, not electing FTC pooling (in other words, claiming s 13(8) exemption on Country X dividend and the "source-by-source" credit method for Country Z interest) results in more tax payable ($305,075 versus $302,675).

¶14-370 Computation of double taxation relief for dividends

Example 8 shows how foreign tax relief claimable by a Singapore resident company in respect of foreign dividends (see ¶14-330) received in Singapore is calculated.

Example 8

During the year ended 31 December 2014, Global Company ("Global"), a company resident in Singapore, received the following net dividend income in Singapore from its 100%-owned foreign subsidiaries.

Required:

Calculate Global's Singapore tax payable in the following scenarios:

1) Global does not elect FTC pooling but claims s 13(8) tax exemption in respect of any foreign dividend where applicable

2) Global elects FTC pooling in respect of the foreign dividends where applicable.

Subsidiary	***Net dividends***	***Remarks***
Company A	$21,600	Company A is resident in Country Z which adopts the imputation system of taxation (corporate tax rate = 28%). There is no withholding tax on dividends. The tax treaty between Singapore and Country Z grants FTC for the 28% tax deducted at source.
Company B	$14,400	Company B is resident in Country Y which adopts the classical system of taxation. The tax treaty between Singapore and Country Y grants FTC for Country Y's underlying tax (20%) and dividend withholding tax (10%).
Company C	$10,800	Company C is resident in Country X which adopts the classical system of taxation (the rates of underlying tax and dividend withholding tax are 20% and 10% respectively). The tax treaty between Singapore and Country X grants FTC for only the dividend withholding tax.
Company D	$8,550	Company D is resident in Country W which does not have a tax treaty with Singapore. Country W adopts the classical system of taxation (the rates of underlying tax and dividend withholding tax are 10% and 5% respectively).

<u>Scenario 1: FTC pooling is not elected and s 13(8) exemption is claimed in respect of any foreign dividend, where applicable</u>

For YA 2015, only the dividends received in Singapore from Companies A, B and C satisfy the following conditions for s 13(8) exemption:

(i) The "subject to tax" condition, and

(ii) The "headline tax rate ≥ 15%" condition.

The dividends from Company D do not satisfy condition (ii).

Global's tax computation for YA 2015 is as follows:

		$
Singapore income (assume)		25,000
Dividends received from:		
	Company A (country Z) (exempt)	0
	Company B (country Y) (exempt)	0
	Company C (country X) (exempt)	0
	Company D (country W) (8,550/0.95/0.9)	10,000
Chargeable income before exempt amount		35,000
Less:	Exempt amount (s 43(6)) (75% × $10,000 + 50% × $25,000)	20,000
Chargeable income after exempt amount		15,000
Tax @ 17%		2,550.00
Less:	UTR for dividend from country D*	728.57
		1,821.43
Less: 30% tax rebate		(546.43)
Net tax payable		1,275.00

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* The Singapore effective tax rate (SETR) is $2,550/$35,000 × 100% = 7.2857%.

Therefore, the UTR for dividend from Country D is restricted to the lower of:

(i) Dividend withholding tax + underlying tax = $450 + $1,000 = $1,450, or

(ii) SETR (7.2857%) × $10,000.

Scenario 2: FTC pooling is claimed in respect of the foreign dividends where applicable

Global's tax computation for YA 2015 is as follows:

	$	$
Singapore income (assume)		25,000
Franked dividends received from Company A (gross) ($21,600/0.72)	30,000	
Foreign dividends (regrossed) from:		
Company B ($14,400/0.9/0.8)	20,000	
Company C ($10,800/0.9/0.8)	15,000	65,000
Note: Although the Singapore–Country X tax treaty does not provide treaty relief for Country X underlying tax, Company C dividends qualify for UTR in respect of Country X underlying tax as Global owns 100% (ie ≥ 25%) of Company C's shares.		
Company D ($8,550/0.95/0.9)		10,000
Chargeable income before exempt amount		100,000
Less: Exempt amount (s 43(6)) (75% × $10,000 + 50% × $90,000)		52,500
Chargeable income after exempt amount		47,500
Tax @ 17%		8,075.00
Less: FTC (see note below) (FTC pooling)	5,248.75	
FTC for dividends from Company D (Note 3)	807.50	
		6,056.25
		2,018.75
Less: 30% tax rebate		(605.63)
Net tax payable		1,413.12

Notes:

(1) Singapore effective tax rate

= 8.075% ($8,075 ÷ $100,000)

(2) FTC claimable for dividends under FTC pooling:

(i) lower of Singapore tax payable on the pooled foreign dividends (ie foreign dividends to which the FTC pooling basis applied), or

(ii) total foreign tax paid on the pooled foreign dividends

= Lower of (8.075% × $65,000)

or [($30,000 × 28%) + ($20,000 – $14,400) + ($15,000 – $10,800)]

= Lower of $5,248.75 or $18,200

= $5,248.75

(3) FTC claimable for dividends from Company D

8.075% x $10,000 = $807.50

Chapter 14

¶14-400 Claim for foreign tax credits

The IRAS requires documentary evidence that income tax has been paid or is payable in the foreign country before it will grant FTC under s 50 or 50A. Where the taxpayer is unable to obtain the evidence in time, he can submit a certificate in the following prescribed form stating that the foreign tax has been paid or will be payable on the foreign income repatriated to Singapore. The certificate has to be signed by a director of the corporate taxpayer, a public accountant in Singapore, or a public accountant in the country in which the foreign income is derived.

CLAIM FOR FOREIGN TAX CREDITS (DOUBLE TAXATION RELIEF OR UNILATERAL TAX CREDIT UNDER SECTIONS 50 AND 50A OF THE INCOME TAX ACT (CAP 134))

I, ______________________, director/auditor of ______________________ hereby certify that income tax of ______________, equivalent to S$ ______________, was/will be paid to the Income Tax Authority of ______________ in respect of *_____ of S$ __________ for the year ended ______________.

This income on which tax was/will be paid was remitted to Singapore on ....

______________ ______________________

Date

Full name, Designation & Signature of person making the certification

* *State nature of income*

(See IRAS e-Tax Guide "Measures to Facilitate Repatriation of Foreign Income", updated on 15 March 2005.)

¶14-410 Deduction method

In Singapore, income tax is not a deductible expense for tax purposes (s 15(1)(g)). In practice, however, the IRAS allows a Singapore resident person to report the amount of his foreign income received in Singapore after deducting foreign tax. The deduction method relieves double taxation because the person thereby reports a smaller amount of foreign income in his Singapore income tax computation. The person does not qualify for any tax credit (see ¶14-310, Example 2, column C).

SINGAPORE'S TAX TREATIES

¶14-510 Treaties signed

Singapore has largely adopted the OECD Model, in form and intention, when negotiating and concluding tax treaties with other countries. Broadly, the OECD Model provides a clear allocation of the right to tax the various types of income to either the country of source (eg income from immovable property) or the country of residence (eg royalties) or both.

Singapore's tax treaties are incorporated into domestic tax law by an order declared by the Minister (see s 49 and ¶14-200). All the tax treaties cover income tax; some of them extend the coverage to include other taxes (eg capital gains tax) that are imposed by the treaty countries.

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Singapore has concluded comprehensive tax treaties with the following countries/jurisdictions:

- Albania
- Australia
- Austria
- Bahrain
- Bangladesh
- Belgium
- Brunei
- Bulgaria
- Canada
- China (People's Republic)
- Cyprus
- Czech Republic
- Denmark
- Egypt
- Estonia
- Fiji
- Finland
- France
- Georgia
- Germany
- Guernsey
- Hungary
- India
- Indonesia
- Ireland
- Isle of Man
- Israel
- Italy
- Japan
- Jersey
- Kazakhstan
- Kuwait
- Latvia
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Malaysia
- Malta
- Mauritius
- Mexico
- Mongolia
- Myanmar
- Netherlands
- New Zealand
- Norway
- Oman
- Pakistan
- Panama
- Papua New Guinea
- Philippines
- Poland
- Portugal
- Qatar
- Romania
- Russian Federation
- Saudi Arabia
- Slovak Republic
- Slovenia
- South Africa
- South Korea
- Spain
- Sri Lanka
- Sweden
- Switzerland
- Taiwan
- Thailand
- Turkey
- Ukraine
- United Arab Emirates
- United Kingdom
- Uzbekistan, and
- Vietnam.

As at 19 January 2015, new comprehensive treaties have been signed with Morocco (2007); Barbados, Belarus, Ecuador and San Marino (all in 2013); Laos, Rwanda and Seychelles (2014), and Uruguay (2015). Protocols/renegotiated treaties have also been signed with Luxembourg (2013), the United Arab Emirates (UAE) (2014), Sri Lanka (2014) and France (2015), but they have not entered into force.

Singapore has limited agreements with the following countries/jurisdictions that relate only to international transport income (see ¶13-830):

- Bahrain, Oman, Saudi Arabia and UAE , for the reciprocal exemption from tax of income arising from international air transport
- Chile, for the reciprocal exemption from tax of income arising from international shipping, and
- Hong Kong, the US and Brazil, for the exemption from tax of income derived from the international operation of ships and aircraft. The limited agreement with Brazil entered into force on 23 December 2013.

¶14-520 Permanent establishment in Singapore's tax treaties

Tax treaties include a separate "Permanent Establishment" article. "Permanent establishment" is a key treaty term and is found in many other treaty articles, including "Dividends", "Interest", "Royalties" and "Capital Gains". It is therefore discussed in this section in some detail and separately from the other treaty articles in ¶14-530.

In a treaty-country scenario, following the OECD Model treaty on which Singapore's tax treaties are generally based, the business profits of a non-resident (ie foreign) enterprise are not allowed to be taxed in Singapore unless that enterprise carries on a trade or business in Singapore through a PE. If a PE exists in Singapore, the IRAS may tax but only the amount of business profits attributable to the PE. If a PE does not exist in Singapore, the non-resident enterprise will not be subject to tax in Singapore even though it may have a source of trading or business profits in Singapore. The non-resident enterprise is said to enjoy "treaty protection" on its business profits in such a situation.

In the converse situation in which a Singapore resident person is trading (in Singapore) with say Australian parties and this is not done through a PE in Australia, the IRAS' position is that the full amount of its business profits will be sourced in Singapore and therefore taxable in Singapore. However, if the Singapore resident person has a Hong Kong branch which trades with the Australian parties, a tax exposure will not arise in Singapore on the part of the business profits attributable to the branch. The IRAS' view is that, for the business profits to be foreign-sourced, there must be a definite, organised contact or presence in the foreign jurisdiction to which the profits can be attributed.

Note that the existence of a PE in Singapore is not, however, a condition for the IRAS to be allowed to tax the non-resident enterprise in respect of its non-business-sources of income (or more precisely, income classified in the tax treaties not as business profit but as another category of income, eg interest). The amount of Singapore tax that may

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be imposed on the interest income will depend, however, on whether it is to be treated as business profits (the interest being attributable to a PE in Singapore — see ¶14-210 under "Interest") or simply as passive income:

- Business profits derived by a company are taxed in Singapore at the prevailing rate of 17% non-final tax, ie with deductions allowed for expenses under the usual rules governing deductions.
- On the other hand, passive interest is subject to a final tax at the stipulated treaty tax rate for interest, if this rate is lower than the 15% domestic tax rate (see Chapter 13 at ¶13-100ff).

General structure of "Permanent Establishment" article in Singapore treaties

The "Permanent Establishment" article in Singapore's tax treaties is generally adopted from that of the OECD Model. While some treaties may contain departures, the general structure of the "Permanent Establishment" article in Singapore tax treaties is consequently as follows:

(1) A "fixed place of business" test

(a) The term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

(b) A PE shall include especially:

(i) a place of management

(ii) a branch

(iii) an office

(iv) a factory

(v) a workshop

(vi) a mine, oil well, quarry or other place of extraction of natural resources, and

(vii) a building site or installation, construction or assembly project which exists for more than six months.

The general view is that the list in (b) above is merely illustrative. For example, an office in Singapore does not of itself amount to a PE of the non-resident (ie foreign) enterprise. To qualify as a PE, that office must first satisfy the main definition of being a "fixed place of business through which the business of the enterprise is wholly or partly carried on".

The IRAS has clarified that a warehouse maintained by a foreign enterprise in Singapore does not, of itself, give rise to a PE. The rationale here appears to be that although a warehouse is a fixed place, it does not in itself amount to a fixed place of business. However, where the existence of a warehouse for the storage and delivery of goods in Singapore is accompanied by the regular filling of orders in Singapore such that a business can be said to be wholly or partly carried on through that warehouse, then a PE may be regarded to exist.

Based on tax cases, a PE normally suggests something more substantial than a licence, a letterhead and isolated activities. It implies the existence of an office, staffed and capable of carrying on the day-to-day business of the enterprise and its use for such purpose, or it suggests the existence of a plant or facilities equipped to carry on the ordinary routine of such business activity.

(2) A "building site or construction or installation project" test

In some of Singapore's treaties, a building site or construction or installation project qualifies as a PE only if it lasts more than 12 months; in other treaties, the stipulated duration may be six or nine months.

Views are divided on whether this test is a subset of the "fixed place of business" test of a PE, or a separate test on its own.

(3) "Dependent agent" test

A foreign enterprise may be deemed to have a PE in Singapore if it has another person (not being an agent of an independent status):

(i) acting on its behalf, and

(ii) who has, and habitually exercises, in Singapore an authority to conclude contracts in the name of the enterprise.

Where an agent transmits orders from Singapore customers to his foreign principal for acceptance and, after the acceptance abroad, delivery is made out of stock belonging to the foreign principal held in Singapore, such activities will not constitute a PE in Singapore and will not subject the foreign principal to Singapore tax. In this situation, the contract of sale would have been concluded abroad and not in Singapore (see Chapter 2 at ¶2-100ff).

The distinction between "dependent agent" and "independent agent" is found only in the tax treaties, not in the s 2(1) definition of PE.

Based on the Commentaries to the OECD Model treaty, to qualify as an "independent agent" falling within the scope of Art 5(6), the agent must satisfy two conditions:

(i) The agent must be independent both legally and economically.

Relevant factors to consider whether condition (i) is satisfied include:

- whether the agent's commercial activities for the enterprise are subject to few detailed instructions or little control
- whether the agent bears his own risks (eg consider the extent that the principal does not indemnify the agent's expenses or losses)
- whether the agent acts for many principals, and
- whether the agent receives an arm's length remuneration.

(For each of the above factors, a "yes" answer would more likely point towards an "independent agent", all other things remaining the same.)

(ii) The agent acts in the ordinary course of his business when acting on behalf of the enterprise.

In this respect, consider the business activities customarily carried out within the agent's trade as a broker, commission agent or other independent agent.

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(4) PE deemed not to include certain listed activities and activities that are "preparatory or auxiliary"

The treaties typically provide that a PE is deemed not to include certain listed activities and activities that are preparatory or auxiliary. All these activities do not form part of the business proper of the enterprise. The separate tests of a PE above (typically tests (1) and (3), in some treaties also test (2)) are subject to (4). This means, eg that:

(i) if the activities of the foreign enterprise that are carried on through a fixed place of business are preparatory or auxiliary, or

(ii) if the activities that the agent undertakes for the enterprise are preparatory or auxiliary,

then no PE is regarded to exist.

In the treaties, typically, the term "PE" is deemed not to include any of the activities listed below:

(i) the use of facilities solely for the purpose of storage, display or delivery of goods belonging to the enterprise

(ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery

(iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise, or

(iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise for the enterprise.

(Author's note: The advanced reader may wish to refer to the 2012 OECD Discussion Draft on PE for the proposed revisions to the OECD Commentaries on the "Permanent Establishment" article. The Draft clarifies, among other things, that the term "PE" is deemed not to include any of these listed activities; they need not be preparatory or auxiliary activities themselves. Those 2012 proposed revisions have not been incorporated in the 2014 version of the OECD Model treaty.)

Based on this "negative" test (4) of a PE:

(a) the mere presence of a showroom used solely for sale promotions would not be regarded as giving rise to a PE

(b) an office maintained in Singapore by a foreign enterprise, which is used solely as a purchasing office, would not constitute a PE in Singapore. The position may be different, however, if sorting, packing or grading are also carried out at the office, and

(c) the carrying on of scientific research (if such an activity is preparatory or auxiliary) in Singapore does not constitute a PE in Singapore. Where however (as its main business) a foreign enterprise carries on research activity in a laboratory in Singapore and sells the results of its research to other parties, it would be regarded as having a PE in Singapore.

(5) Parent–subsidiary relationship in itself does not make the parent a PE of the subsidiary, and vice versa

Under Singapore's tax treaties (like most treaties), the fact that a company, which is resident in a contracting country, controls or is controlled by a company resident in the other contracting country does not in itself make either company a PE of the other. Thus, a Singapore resident parent is not, by the parent–subsidiary relationship alone, a PE of the treaty-country resident subsidiary, and vice versa.

Similarly, the fact that a company, which is resident in a contracting country, controls or is controlled by a company which carries on business in the other contracting country (whether through a PE or otherwise) does not in itself make either company a PE of the other.

Other features of PE found in Singapore treaties

In some of Singapore's tax treaties, the following scenarios may also variously give rise to a PE:

(i) if the foreign enterprise carries on supervisory activities (for more than a stipulated period) in Singapore in connection with a building site or construction, installation or assembly project being undertaken in Singapore. The stipulated period is usually the same as that for the site or project itself

(ii) if the foreign enterprise furnishes services, including consultancy services, through employees or other personnel or persons engaged by the enterprise for such purpose in Singapore for a period or periods exceeding in the aggregate six months in any period of twelve months commencing or ending in the fiscal year concerned, and

(iii) if the foreign enterprise has an agent who maintains a stock of goods or merchandise belonging to that enterprise from which the agent regularly fills orders on its behalf in Singapore.

To summarise the PE concept, it is sometimes more generally described as involving three tests, namely:

(a) *the asset test* — this broadly corresponds to the "fixed place of business" test

(b) *the agency test* — this broadly corresponds to the "dependent agent" test, and

(c) *the activity test* — this test is used to help determine whether activities such as supervisory activities in connection with a construction project; the storage of goods for display; the purchase of goods; or the collection of information, whether or not carried on through a fixed place of business, constitutes a PE.

¶14-530 Features in Singapore's tax treaties

As Singapore's tax treaties are largely based on the OECD Model treaty, many of the features discussed in ¶14-210 are found in them as well. This part discusses some of those features in more detail as well as other features that are peculiar (though not unique) to the Singapore treaties. The discussion is not intended to be exhaustive.

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Business profits

If the business of a foreign enterprise is carried on through a PE in Singapore, tax is imposed on the profits attributable to the PE as if it were an independent enterprise dealing at arm's length with the enterprise of which it is a PE. In determining the taxable profits, deduction will be given for expenses incurred which are reasonably attributable to the PE. This is regardless of where the expenses may have been incurred.

International shipping and air transport

Double taxation is a serious obstacle to operating an international air or shipping transport business. Double taxation is avoided by tax treaties or international transport agreements.

(a) Under tax treaties

Generally, under the tax treaties, profits from the operation of ships and aircraft in international traffic will only be taxed in the operator's country of residence. In some treaties (eg with Belgium and Poland), the place of effective management replaces residence as the criterion.

In most treaties, "international traffic" means any transport by a ship or aircraft operated by an enterprise resident in a contracting country, except where the ship or aircraft is operated solely between places in the other contracting country. This means that the country of residence has the right to tax income from domestic traffic and income from international traffic between third countries. The other contracting country has the right to tax income from traffic solely within its borders.

The tax treaties typically provide for:

- full exemption to profits derived from the operation of ships and aircraft in international traffic unless the ships and aircraft are operated wholly or mainly between places within either country (eg treaties with the UK and Japan), or
- 50% exemption of profits derived from the operation of ships and aircraft in international traffic, with credit being allowed by the country of residence for the remaining 50% suffered in the other country (eg treaty with Malaysia).

Generally (eg treaties with China, Indonesia and Malaysia), the exemption or reduced tax is extended to income arising from participation in shipping or aircraft pool, a joint business or an international operating agency.

An enterprise is not required to engage exclusively in shipping, inland transportation or air transport to qualify for the full or limited exemption under the treaty. For example, if an enterprise has a PE in Singapore, and this PE's activities include the operation of ships and aircraft in international traffic, the treaty article also covers such a PE. However, if the PE incurs any expenses in Singapore for its ships or aircraft which are operated wholly or mainly outside Singapore, such expenses would not rank for deduction in Singapore.

Shipping and air transport enterprises may engage in other activities which are closely related to the actual operation of ships and aircraft. The profits derived from these activities are generally treated as derived from the operation of ships and aircraft. These activities are:

- operation of bus services connecting airline offices with the airport
- advertising and sales promotion
- transportation of goods from depots or warehouses to airports
- leasing a ship or aircraft on charter fully equipped, supplied and manned, and
- leasing of containers where such leasing is supplementary or incidental to the international operation of ships and aircraft.

Profits derived from the following activities would normally fall outside the scope of shipping or air transport profits:

- operating a hotel, unless such a hotel is exclusively for transit passengers and the cost of service is included in the price of the passage ticket
- operating a shipbuilding yard or engaging in aircraft manufacturing
- leasing a ship or aircraft on a bareboat charter, and
- investment income.

None of Singapore's tax treaties includes or refers to the operation of ships engaged in fishing, dredging or hauling activities.

(b) Under international transport agreements

Please refer to Chapter 13, ¶13-830 under "Specific agreements for shipping and/or aircraft income".

Dividends

Under Singapore's one-tier system of corporate taxation, dividends paid by a company resident in Singapore are exempt in the hands of its shareholders. There is therefore no dividend withholding tax. Whether these Singapore dividends are taxable in the other treaty country would depend on the domestic tax laws of that country and what the "Dividends" article in the treaty provides.

Interest

Singapore's tax treaties may provide for a 5% or 10% final tax on interest income sourced in Singapore. This is less than the 15% final tax on interest under domestic law (see Chapter 13 at ¶13-100ff). For the reduced tax rates imposed on interest income under Singapore's tax treaties, see the *Summary of Singapore's Tax Treaties* at the Appendix (¶22-000) of this book.

Royalties

Singapore's tax treaties usually provide for a 10% or lower final tax on royalties sourced in Singapore.

In some Singapore's tax treaties, the treaty definition of "royalties" is wider than that set out in ¶14-210; it includes payments as consideration for the use of industrial, commercial or scientific equipment as well. Under such treaties, the "Royalties" article would apply in priority to the "Business Profits" article to, eg equipment leasing payments. A distinction therefore has to be drawn between the use of versus the sale (eg credit sale) of equipment.

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Independent personal services

Under Singapore's domestic tax laws, if a self-employed individual is a non-resident, a 15% final tax is imposed on his gross professional income in Singapore unless he elects to be assessed on his net income at 20% (s 43(4) and 43(5)).

This position is modified under Singapore's tax treaties. Despite the deletion of the "Independent Personal Services" article from the OECD Model in 2000, Singapore continues to retain this article in its treaties. Typically, Singapore is allowed to tax the non-resident individual's income from the performance of professional services or other activities of an independent character only if:

- he has a fixed base regularly available to him in Singapore for the purpose of performing his activities, or
- his stay in Singapore is for a period or periods exceeding a total of 183 days within any 12-month period.

Income from employment

This article is usually expressed as being subject to some other articles, including "Director's Fees", "Artistes and Sportsmen", "Pensions" and "Government Service".

Like in most treaties, Singapore's tax treaties generally provide that income from employment will be taxed in Singapore if the employment is exercised in Singapore. Singapore may not tax the income, however, if the following conditions are met:

- the employee is not present in Singapore for more than 183 days in a tax year (the treaties with Denmark and Norway restrict the maximum period to 183 days in any 12-month period)
- the employer is a resident of the contracting country (in some treaties, eg those with China, the Netherlands and Germany, it is sufficient that the employer is not a resident in Singapore), and
- the employee's remuneration is not borne by a PE (in Singapore) of an enterprise of the contracting country.

Some of Singapore's tax treaties (eg treaties with the UK, Denmark, Norway and Germany) require an additional condition to be satisfied: the employee's income must be subject to tax in the other contracting country.

In most treaties, the remuneration of persons employed on board a ship or aircraft is to be taxed in the country of residence of the enterprise operating the ship or aircraft.

Directors' fees

Singapore's tax treaties provide that the source of directors' fees is in the country in which the company paying the fee is resident. The full domestic tax rate (20%) would apply as there is no exemption or reduced tax rate under the treaties.

Government payments

Any salary, wage, pension or similar rewards for personal services paid by the government of a contracting country to persons performing services in Singapore on behalf of that government are exempt from tax in Singapore. They will be taxed in the contracting country.

Visiting teachers or researchers

Recent tax treaties negotiated by Singapore continue to include a separate article on teachers and researchers. Under these treaties, subject to certain conditions, payments by way of remuneration to teachers or researchers are not taxed in the country where the services are provided (ie in the country of visit). These provisions are aimed at fostering cross-border exchange of academics and researchers.

Associated companies

The tax authorities of contracting countries usually retain the right to allocate profits between associated companies for tax purposes. Where the commercial or financial arrangements between associated companies differ from those that might be expected to exist between independent companies and the arm's length principle is not adhered to, the relevant tax authority has the right to adjust profits on the basis that the companies were independent companies dealing at arm's length with each other. Any adjustments made to the profits of a company in this manner may create double taxation because none of Singapore's tax treaties contains provisions which require the other tax authority to automatically give corresponding relief to the other company.

Non-discrimination

Departing from the OECD Model treaty, the scope of the "Non-discrimination" article in Singapore's treaties is normally restricted to the taxes covered by the treaty.

Exchange of information

This article provides for the EOI between the tax authorities of the contracting countries. The objective is to prevent tax evasion. The information to be exchanged may relate to:

(i) changes in the domestic tax laws of the contracting countries, or

(ii) a specific taxpayer (upon the treaty partner's request if it has a valid tax interest for making the request).

The article also provides that the tax authority of the requesting country is required to treat the information received as secret. The information is not to be disclosed to any person other than those concerned with the enforcement, assessment and collection of taxes or the determination of tax appeals including a court of law. A contracting country is not obliged, however, to disclose any business, industrial or professional secrets.

In 2009, Singapore endorsed the new OECD tax standard on EOI (revised Art 26 of the 2008 OECD Model Convention) which significantly enhanced the scope of information to be exchanged. Singapore has signed protocols with many countries (a few pending ratification) to replace the existing "EOI" articles in their treaties with the new standard (see ¶14-550).

Section 105BA similarly allows Singapore to provide information pursuant to "EOI arrangements".

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Limitation of relief

Because Singapore taxes foreign income only upon remittance, the tax exemption (or reduction) of any income (eg royalties or interest) in the country of source under a Singapore tax treaty may result in an unintended double non-taxation (or benefit) if the recipient of the income does not remit it to Singapore. To prevent this, the treaty may include a "Limitation of Relief" article which provides that the Singapore resident person would be granted tax exemption or reduced withholding tax in the treaty country only if the income is received in Singapore and consequently subject to tax here.

As a condition to allow the Singapore resident such a tax exemption or reduction, the tax authority of the treaty country would normally require him to furnish a certificate from the IRAS stating that he is a resident of Singapore. Some treaty countries may also require the IRAS to certify that the Singapore resident has remitted or will remit the foreign income to Singapore. The IRAS will issue the certificate of residence to a taxpayer if he has provided all relevant information to the IRAS.

Assistance in the collection of taxes

This article was inserted in the 2005 version of the OECD Model treaty. See also ¶14-550 for the latest developments in Singapore.

¶14-540 Tax sparing provisions

The following Singapore tax treaties contain "tax sparing relief" provisions:

- Bangladesh
- Brunei
- Canada
- China (People's Republic)
- Egypt
- Fiji
- France
- Hungary
- India
- Ireland
- Israel
- Italy
- Republic of Korea
- Kuwait
- Libya
- Luxembourg
- Malaysia
- Malta
- Mauritius
- Mexico
- Mongolia
- Myanmar
- New Zealand
- Oman
- Pakistan
- Papua New Guinea
- Philippines
- Portugal
- Qatar
- Russian Federation
- Slovenia
- Sri Lanka
- Taiwan
- Thailand
- Ukraine
- United Arab Emirates, and
- Vietnam.

In some treaties, the tax sparing relief is granted unilaterally (by Singapore to the other treaty country, or vice versa); in others, it is granted mutually (by both countries).

The tax sparing relief granted to Singapore by many of the developed countries (eg Australia, the Netherlands and the UK) had expired.

For details of the specific treaties, see the *Summary of Singapore's Tax Treaties* at the Appendix (¶22-000) of this book.

Example 9 illustrates the tax sparing relief available under the treaty between Singapore and Country A.

Example 9

A Singapore company has a wholly owned subsidiary in Country A whose income is exempt from tax in Country A. Assume the corporate tax rate in Country A is 30%.

During the year 2014, the Singapore company received $1.3m tax exempt dividends from its subsidiary. Assume the dividends do not qualify for tax exemption under s 13(8) but qualify for tax sparing relief in Singapore.
Singapore's tax computation for YA 2015 will be:

	$
Singapore adjusted profits	2,000,000
Exempt dividends received from Country A	1,300,000
	3,300,000
Less: Exempt amount	(152,500)
Chargeable income	3,147,500
Tax @ 17%	535,075
Less: Tax sparing relief under the Singapore-Country A tax treaty ($1,300,000 × 16.2144%)	(210,787)
	324,288
Less: 30% tax rebate (capped at $30,000)	(30,000)
Net tax payable	294,288

Note:

The tax sparing relief would be the lower of Singapore tax payable or the foreign tax deemed paid in Country A. Under s 50, the foreign tax relief is limited to $1.3m × the lower of Singapore effective tax rate of 16.2144% ($535,075/$3.3m) or the foreign tax rate of 30%.

¶14-550 International exchange of information

In the last few years, the income tax law in Singapore regarding the international EOI has undergone extensive changes. This part outlines some main events beginning with Singapore's endorsement in 2009 of OECD's enhanced EOI standard in the revised OECD Art 26 (see sample article from the Singapore–UK treaty in the boxed text below). It then lists some relevant tax changes introduced by the *Income Tax (Amendment) Acts 2013 and 2014*).

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The OECD's new standard provides tax administrators with a legal basis and proper channel for the EOI for the purposes of applying the treaty provisions and countering tax evasion.

To align Singapore's income tax law with the new standard, the Act was amended.

The manner in which the EOI under tax treaties is to be carried out is provided for in s 105A to 105H (these sections comprise Pt XXA "Exchange of Information under Avoidance of Double Taxation Arrangements"). The then Pt XXB "Court Orders Relating to Restricted Information" was inserted, but it has since been deleted by the *Income Tax (Amendment) Act 14/2013* and replaced with a new Pt XXB "International Agreements to Improve Tax Compliance". The new Pt XXB reflected developments that included Singapore's commitment to sign an international tax compliance agreement with the US following the US adoption of the *Foreign Account Tax Compliance Act* (FATCA) (see below). Some key provisions and tax cases that related to the former Pt XXB have been retained below as a Historical Note.

Historical Note

Under the old Pt XXB, the Comptroller was authorised to obtain information in complying with a request for information from the competent authority concerning the tax position of any person in accordance with the EOI provision in the tax treaty or with an EOI treaty (s 105I to 105M). If the information requested was, in the Comptroller's opinion, protected from disclosure under the banking secrecy rules or trust company secrecy rules, the Comptroller or an authorised officer may apply to the High Court for an order under s 105J(2). The High Court may make an order requiring the person who appears to the Court to have possession or control of the information to which the application relates to:

(a) make a copy of the document containing the information and provide the copy to an authorised officer for him to take away, or

(b) give an authorised officer access to the information,

within 21 days from the date of order or such other period as the Court considers appropriate.

To make such an order, the High Court must, however, be satisfied that:

(a) the making of the order is justified in the circumstances of the case, and

(b) it is not contrary to the public interest for a copy of the document to be produced or access to the information to be given (s 105J(3)).

The term "tax position" refers to any tax covered by the tax treaty including the person's position with regard to:

(a) past, present and future liability to pay such tax

(b) penalties, interest and other amounts that have been paid or are or may be payable, and

(c) claims, elections, applications and notices that have been or may be made or given in connection with such tax.

Tax cases concerning the Comptroller's applications for a High Court order under s 105J in the old Pt XXB

CIT v AZP (2012) MSTC ¶70-013; [2012] SGHC 112

In *CIT v AZP* (2012) MSTC ¶70-013; [2012] SGHC 112, the Singapore High Court declined to make an order under s 105J(2). The facts were as follows.

The Indian tax authority suspected that an Indian national ("M") had violated India's tax laws by depositing undeclared income in bank accounts in overseas jurisdictions. It believed that the money constituting M's undeclared income was remitted to Account 1 and Account 2 in the names of Co X and Co Y respectively. Both these accounts were held with the defendant, AZP, a bank in Singapore.

In relation to Co X, the Indian tax authority relied on an unsigned transfer instruction allegedly issued by M instructing a bank in Switzerland to transfer money from a bank account in New York to Account 1. It relied on this transfer instruction as evidence of the connection between M and Co X. It also drew a connection between M and Co Y by relying on a second unsigned transfer instruction allegedly issued by M for money to be remitted to Account 2.

The Indian tax authority therefore requested the Comptroller to facilitate the release of information under Art 28(1) of the Singapore-India tax treaty (as amended by the Second Protocol). Acting on this request, the Comptroller applied to the High Court for an order requiring AZP to produce the information relating to the two accounts, from 1 January 2008 (the date on which the treaty provisions applied) to date.

The High Court was not satisfied that the requested information was "foreseeably relevant" for carrying out the tax treaty provisions because of inadequate documentation provided by the Indian tax authority. Co X and Co Y were NOT Indian incorporated entities, nor were they under investigation by the Indian tax authority. It was therefore not necessary for the Court to determine whether the two conditions set out in s 105J(3) for making an order were also satisfied. Nevertheless, the Court took the view that consideration as to whether the application was justified is a process that envisages more evidence than had been adduced. This should include evidence of the use of the two accounts for the purposes complained of in India. The third element of public interest (concerning national security) did not arise in this case, as it was not alleged that the information sought would involve "national security interests, or sensitive information held in the vital interests" of Singapore.

CIT v BJY & Anor (2013) MSTC ¶70-025; [2013] SGHC 173

CIT v BJY & Anor (2013) MSTC ¶70-025; [2013] SGHC 173 also involved the Singapore–India tax treaty (as amended by the Second Protocol). The High Court, however, allowed the Comptroller's application and granted an order requiring the two respondent banks (referred to as "BJY" and "Bank 2") to provide the Comptroller with certain information, documents and bank records concerning the third defendant ("BJX").

The High Court took the approach that the condition that the information must be foreseeably relevant was not an independent condition but was an important although insufficient consideration in deciding whether an order granting access to information requested is "justified in the circumstances" as stipulated in the first condition of s 105J(3). The High Court distinguished the facts from those in *AZP*: in the present case, the account holder was itself subject to investigations by the Indian competent authority; and there was also sufficient evidence that BJX was conducting business in India through some Indian companies, and funds were possibly transferred from those Indian companies to BJX via the bank accounts concerned.

In *CIT v BJX* (2013) MSTC ¶70-022, the third respondent BJX in the *BJY* case lodged an application for a stay of execution of the High Court order allowing the production of documents. The application was dismissed.

ABU v CIT [2015] SGCA 4

This case concerned an application made by the appellant who is a Japanese national residing in Japan. The National Tax Agency of Japan (JNTA) had made an EOI request to the Comptroller under Art 26(1) of the Singapore–Japan treaty as amended by the Protocol. The ostensible purpose of the JNTA's request was to determine whether the appellant had failed to report distributions he received from foreign securities investment funds which he and his family had invested in. In this regard, the JNTA had found documents during the appellant's tax examination in Japan suggesting that he had not done so. The JNTA therefore requested,

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among other things, the production of bank statements for several accounts with [BLM] Bank in Singapore for the period 2006 to 2011 which were held variously in the name of the appellant, his son, and certain companies and trusts (their related entities) ("Letter of Request"). The JNTA had also given its reasons for requiring these bank statements.

Being of the opinion that the requested bank statements were protected from unauthorised disclosure under the banking secrecy rules, the Comptroller sent a s 105E notice to the Bank and each of the account holders on 15 April 2013 informing them of his intention to make a s 105J(1) application to the High Court for the production of the bank statements.

On 31 May 2013, the High Court made an order in terms of the Comptroller's application in Originating Summons (OS) 331; the order required the Bank to produce all bank statements for the period 2006 to 2011 concerning all the accounts held by the eight account holders identified in the Letter of Request.

On 19 June 2013, the appellant (and the other account holders) filed summonses to discharge the High Court order. The appellant's application was premised on a change of circumstances between the end of May 2013 and June 2013 in the light of alleged further developments arising from communications between his representatives and the JNTA in Japan. The High Court dismissed each of the summonses filed — see *CIT v BLM* [2014] 1 SLR 123. The appellant thereafter appealed.

The Singapore Court of Appeal's decisions on the key issues were as follows:

(1) While s 105J requires the High Court to be independently satisfied as to the justification of a request, Parliament had not intended for the High Court to substantively review a request to the extent of inquiring into the truth of the factual assertions contained in it. Taking a purposive and contextual interpretation of the statutory scheme, Parliament had intended for the validity of a request to be determined on its facts.

(2) The legislation permitted the EOI relating to any period both before and after the date on which the treaty was given effect as a "prescribed arrangement" under s 105D(1) (ie 14 July 2010) and the date on which the 2009 amendments to the Act came into force (ie 9 February 2010).

(3) As the Letter of Request contained all the information prescribed by the Eighth Schedule, the Court of Appeal was also satisfied that the standard of foreseeable relevance under Art 26(1) of the treaty had been met.

As the Comptroller's application in OS 331 (and the High Court's order made pursuant to it) went beyond the JNTA's original request which required production of bank statements pertaining only to the specified accounts of the account holders, however, the Court of Appeal amended the terms of the order accordingly.

Updates leading to the *Income Tax (Amendment) Act 2014*

On 15 April 2013, the Global Forum on Transparency and Exchange of Information for Tax Purposes ("the Global Forum") affirmed that Singapore's EOI regime was in line with the internationally agreed standard.

On 29 May 2013, Singapore signed the Convention on Mutual Administrative Assistance in Tax Matters (as amended by the 2010 Protocol and made open to States which are not members of the OECD or the Council of Europe). The signing expanded Singapore's network of EOI partners by 11 jurisdictions, including Brazil and the US. The scope of assistance covered under this multilateral convention is very wide. It includes EOI on request, automatic EOI, spontaneous EOI, simultaneous tax examinations, tax examinations abroad, assistance in the recovery of tax claims, measures of conservancy, and the service of documents. The scope of taxes covered includes income tax, capital gains tax and goods and services tax, but not customs duties. The convention also facilitates joint audits.

The *Income Tax (Amendment) Act 2013*:

(1) extended OECD's enhanced EOI standard to all of Singapore's tax treaty partners without regard to the domestic tax interest requirement or to confidentiality obligations under banking or trust company secrecy laws

(2) removed the need for the Comptroller to apply for a High Court order in order to obtain information from a bank or trust company; issuing a notice will suffice, thus simplifying the information collection process

(3) enabled the Singapore Government to conclude an Inter-Governmental Agreement (IGA) with the US so as to facilitate compliance by financial institutions and other persons in Singapore with the FATCA in the US; (In brief, the FATCA requires foreign financial institutions (FFIs) to provide the US Internal Revenue Service (IRS) with information in their possession about financial accounts held by US persons. Failure to do so would mean that applicable payments to the US account holders by the FFIs are subject to US domestic withholding tax rates.)

   In this regard, the Minister may, by order, declare as an "international tax compliance agreement":

   (a) such an agreement, or

   (b) any agreement modifying or supplementing that agreement, or

   (c) any other agreement between the Singapore Government and a foreign government which makes provisions corresponding, or substantially similar, to that made by an agreement in (a) or (b) (s 105J and 105K).

(4) obviated the need for a tax treaty or an EOI arrangement to be separately prescribed under s 105C (repealed) before the Comptroller can use his powers under Pt XXA to comply with a request made under the tax treaty or EOI arrangement (s 105A(1))

(5) clarified that information may be sought and furnished under Pt XXA concerning any type of tax (not only income tax) of the foreign jurisdiction that is covered by the EOI provision in the tax treaty or EOI arrangement (s 105A(4))

(6) removed the requirement for the Comptroller to separately notify the person who has possession or control of the information sought, of a request for information protected under the banking or trust company secrecy laws; he only has to notify the person in relation to whom the information is sought (the amended s 105E and 105F)

(7) enhanced the Comptroller's information-gathering powers (see s 65D and 65E and Chapter 17), and

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(8) replaced the old Pt XXB with a new Pt XXB (comprising s 105I to 105P) titled "International Agreements to Improve Tax Compliance":

(i) The new s 105L requires a specified person to provide the Comptroller information of a specified description, at a specified time or frequency; the person, description of information, and time or frequency will be specified by regulations under the new s 105P. The duty to provide the information prevails over any duty of secrecy but does not extend to "information subject to legal privilege" (this term appears in the amended s 65B and the new s 105L; there is a revised definition of this term in s 2).

(ii) The failure to comply with the new s 105L, and the giving of false information in purported compliance with it, are offences that may, upon conviction, result in imprisonment (s 105M).

(iii) Information obtained to fulfil a request for information under a tax treaty or an EOI arrangement, as well as information provided or obtained for the purpose of an international tax compliance agreement, may be used for a domestic tax administration purpose (s 105GA in Pt XXA and s 105O in Pt XXB).

On 9 December 2014, Singapore signed the IGA Model 1 with the US (a copy of IGA1 can be accessed from the IRAS website at www.iras.gov.sg). Under IGA1, the information will be exchanged directly between the relevant Singapore and US government agencies. The FFIs need not conclude agreements individually with the US IRS, and information on US account holders need only to be reported directly to the relevant Singapore authorities instead of the US IRS.

The Ministry of Finance (MOF), Monetary Authority of Singapore (MAS) and the IRAS had earlier sought feedback on certain information to be contained in the draft Regulations and the e-Tax Guide (which will be issued following the signing of the Singapore–US IGA1). These would elaborate how terms used in the IGA are to apply in the Singapore; the e-Tax Guide also seeks to convey broad principles that can be applied to different circumstances.

For an overview of the FATCA Filing Process and related FAQs, see IRAS website: www.iras.gov.sg.

Some relevant changes introduced by the *Income Tax (Amendment) Act 2014* are:

(1) Extending the scope of EOI to cover also multilateral EOI arrangements (previously only bilateral treaties were covered) (s 105A and 105BA as amended). This change in part reflects Singapore's signing of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

(2) Controlling the confidentiality of the proceedings and documents used in the proceedings, where the proceedings are initiated to review actions of the Comptroller taken to enable Singapore to carry out EOI for the purpose of a tax treaty or EOI arrangement (the new s 105HA) or of an international tax compliance agreement (s 105Q).

(3) Permitting any other person authorised by the Comptroller to also receive information to enable Singapore to discharge her obligations under an international tax compliance agreement (s 105L as amended) (previously only the Comptroller could receive such information).

(4) Authorising the Comptroller to give directions to ensure that any arrangements or actions designed to circumvent the obligation of disclosure under s 105L or other obligations imposed by regulations under s 105P (these obligations include those under the recently-signed IGA1) may be disregarded (the new s 105MA, an anti-avoidance provision).

(5) Permitting the disclosure to the authorised officers of a foreign government of any information that the Comptroller considers to be foreseeably relevant to the administration or enforcement of the foreign country's laws concerning any tax of that country, under the terms of a tax treaty or an EOI arrangement (whether bilateral or multilateral) (the new s 6(4A)).

Relevant treaty updates concerning EOI

As at 19 January 2015, Singapore's protocols to replace the "EOI" articles in the existing treaties with the following countries by the new OECD standard were ratified on various dates and have the force of law: Australia, Austria, Bahrain, Belgium, Brunei, China, Denmark, Finland, France, India, Italy, Japan, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Qatar, South Korea, Turkey, Uzbekistan and United Kingdom. In 2014, the Exchange of Notes (2012) with Austria amending a provision of the "EOI" article in the Singapore-Austria treaty was ratified; the new treaty with Morocco (2007) was ratified however without the enhanced EOI article.

Singapore's treaties with the following countries incorporating the new standard have been ratified: Albania, Georgia, Guernsey, Ireland, Isle of Man, Jersey, Panama, Saudi Arabia and Slovenia. Singapore's new or renegotiated tax treaties with Luxembourg, San Marino and Ecuador (2013), with Seychelles, Laos, Rwanda and Sri Lanka (2014), and with France and Uruguay (2015), and the second protocol to Singapore's treaty with UAE (2014) (all incorporating the new standard), have not been ratified.

The following EOI article is taken from the protocol amending Art 27 of the Singapore–UK treaty and is based on OECD enhanced Art 26:

"1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Art 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to

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the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

   (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

   (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

4 If information is requested by a Contracting State in accordance with the provisions of this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 of this Article but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5 In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

The Automatic Exchange of Information or AEOI standard

On 17 January 2014, the OECD published a Common Reporting Standard for Automatic Exchange of Financial Account Information. It sets out a minimum standard under which participating jurisdictions obtain information from their financial institutions and automatically exchange that information with other jurisdictions annually. The G20 has mandated the Global Forum to establish a mechanism to monitor and review the implementation of the new global standard. This Standard differs from the FATCA in that, among other things, it is based on residence and does not refer to citizenship.

On 3 November 2014, Deputy Prime Minister and Finance Minister Tharman Shanmugaratnam informed Parliament that as a member of the Global Forum, Singapore has decided to implement the OECD AEOI standard by 2018, with the following conditions:

(a) First, there must be a level playing field among all major financial centres, including Hong Kong, Dubai, Switzerland and Luxembourg, to minimise regulatory arbitrage.

(b) Second, Singapore will only engage in AEOI with jurisdictions that have a strong rule of law and can ensure the confidentiality of information exchanged and prevent its unauthorised use.

(c) Third, there must be reciprocity with any future AEOI partners in terms of information exchanged.

Mr Tharman said that these conditions were necessary to ensure that Singapore continues to respect legitimate expectations for taxpayer confidentiality and to ensure that AEOI is effective in tackling offshore tax evasion; it should also not result in fund flows to less regulated jurisdictions. Further, Singapore's continued success as a financial hub depends on maintaining its reputation as a trusted and responsible financial centre. This means adhering to international standards, including AEOI, that enable Singapore to strengthen its framework for international cooperation to combat cross-border financial crime.

For details, see MOF website at www.mof.gov.sg.

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CHAPTER 15

CLUBS AND ASSOCIATIONS

¶15-100 Principle of mutuality

The mutuality principle recognises that, for tax purposes, a person cannot make a profit out of himself or by trading with himself. Basically, this means that a person's income must be derived from external sources. For example, a person may set up a savings fund for a particular purpose into which the person contributes $10,000. If only half of the contribution is subsequently spent, the return of the balance of $5,000 cannot be regarded as income of that person for tax purposes. Similarly, any surplus arising from contributions made by a group of individuals to a "mutual concern" is not regarded as income for tax purposes.

Lord *Watson* in *Styles v New York Life Insurance Co* 2 TC 460 said:

> "When a number of individuals agree to contribute funds for a common purpose . . . and stipulate that their contributions, so far as not required for that purpose, shall be repaid to them, I cannot conceive why they should be regarded as traders, or why contributions returned to them should be regarded as profits."

The mutuality principle is the basis for not taxing trading income of certain incorporated and unincorporated bodies. The test of mutuality is that all contributors to the common fund must be the participators in the surplus and vice versa. If there is complete identity between the contributors and the participators (ie every contributor is a participator and vice versa), the particular form in which the association takes is not material (*Municipal Mutual Insurance Ltd v Hills* (1930) 16 TC 430). All the association's receipts must go back to the participants and the association must not make a profit out of their contributions (*Jones v South-West Lancashire Coal Owners' Association* (1927) AC 827; 11 TC 790).

Following the mutuality principle, only the surplus of a mutual association representing an excess of members' contributions over expenses (ie a refund of their own money) is excluded from tax. Where a mutual association trades with non-members, an exposure to tax can arise on any surplus that may result. Thus, where a mutual association trades with both members and non-members, any surplus arising has to be apportioned between that relating to trade with members and that relating to trade with non-members.

Singapore context

Under the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act"), the principle of mutuality would apply, subject to the conditions in s 11. Section 11(1) applies to members' clubs, clan associations and similar institutions while s 11(2) applies to trade and professional associations.

Other mutual organisations such as co-operative societies, approved friendly societies and trade unions may enjoy tax exemption under s 13(1)(f) and (m).

CLUBS AND SIMILAR INSTITUTIONS

¶15-210 Section 11(1)

A body of persons that operates as a club or similar institution may be considered as a taxable person even though it may not be a legal person. The definition of a person under s 2 includes a "body of persons", and clubs fall within this category. The mutuality principle applies to clubs or similar institutions in Singapore, subject to specific conditions laid out in s 11(1).

The provisions of s 11(1) apply to both incorporated and unincorporated clubs and institutions. However, these provisions do not apply to a proprietary club, which is not owned by the members themselves but by some other person or persons (eg Raffles Town Club). Such proprietary club is regarded as carrying on a business and is assessable on its gains or profits under s 10(1)(a).

A club or a similar institution is not deemed to be carrying on a business if 50% or more of its gross receipts on revenue account are received from its members (s 11(1)). In such instance, any surplus accruing to members from subscriptions, contributions and charges paid by them will not be regarded as income. However, the club or institution will nevertheless be liable to tax on income from other sources derived from dealings with non-members (eg dividends, rents, interest and the annual value of property) (see IRAS e-Tax Guide "Taxation of Management Corporations, Clubs and Similar Institutions", published on 12 July 1993). "Members" are persons who are entitled to vote at the general meetings of the club or institution.

Revenue receipts from members include entrance fees, subscriptions, bar and dining hall sales and jackpot machine takings. In *PR Pte Ltd v CIT* (2001) MSTC 7,409, membership to a club was available on payment of a membership fee comprising entrance fee (15%) and an "initiation deposit" (85%). The initiation deposit is refundable when a member, at any time within six months of his having been a member of the club for 30 years, gives written notice of his intention to terminate the membership. The deposit would be forfeited should the member choose to keep the

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membership. Further, the club is entitled to forfeit sums representing the initiation deposits of members under certain circumstances.

The Court of Appeal upheld the earlier Board of Review and High Court decisions and found the initiation deposits received by the club to be in the nature of income and not a loan. The taxpayer's argument that the initiation deposit had not accrued to them at the time of payment was also rejected as the taxpayer had been at liberty to use the money as it pleased. Additionally, the Court characterised the deposit as a contractual buyback of the membership, which would be subject to tax. Subsequent refund of any deposit would amount to expenditure incurred for the purpose of producing the income from selling the club memberships.

Management corporations

Management corporations set up under the *Land Titles (Strata) Act (Cap 158, 2009 Revised Ed)* are treated by the Comptroller of Income Tax (the "Comptroller") as clubs or similar institutions and are subject to the provisions of s 11(1). This administrative practice took effect from the year of assessment (YA) 1993 following the decision of the Board of Review in *The Management Corporation Strata Title No XYZ v CIT* (1993) 2 MSTC 5,155.

In that case, the Board of Review agreed with the management corporation that it carried on a club or similar institution within the meaning of s 11(1). The Board held that, even though the management corporation was deemed not to carry on a business as more than half of its gross receipts on revenue account were from its members, its income (eg interest and rent) from dealings with non-members was, however, taxable.

The tax rates applicable to a management corporation are the same as those applicable to any club or trade association.

(See IRAS e-Tax Guide "Taxation of Management Corporations, Clubs and Similar Institutions", published on 12 July 1993.)

¶15-220 Assessment

From YA 2010

From YA 2010, clubs and similar institutions, whether incorporated or unincorporated, are taxed at the normal corporate tax rate of 17% (s 43(1)). Unincorporated clubs and similar institutions are eligible for the partial tax exemption scheme (¶2-850).

Example 1

The following results were produced by Chester Club, an unincorporated club, for the year to 30 June 2015.

Income and Expenditure Account

	$		$
Salaries and wages	42,000	Members' entrance fees	4,000
Other administrative expenses	5,000	Members' subscriptions	45,000
Property repairs, etc	15,000	Bar and catering	16,000
Property assessment	1,000	Rents	63,000
Furniture and fittings	2,000	Interest	36,000
Net surplus	99,000		
	164,000		164,000

Comparison of receipts from members and non-members

Receipts	***From members*** $	***From non-members*** $
Members' entrance fees	4,000	—
Members' subscriptions	45,000	—
Bar and catering (assumed)	8,000	8,000
Rents	—	63,000
Interest	—	36,000
	57,000	107,000
Percentage	35%	65%

Chester Club's gross receipts on revenue account from members did not exceed 50%. Therefore, all of the club's income from transactions with both members and non-members was deemed to be derived from the carrying on of a business and was assessable to tax accordingly.

Chester Club's liability for YA 2016 will be computed as follows:

Business income		$	$
Members' entrance fees			4,000
Members' subscriptions			45,000
Bar and catering			16,000
Total business income			65,000
Less:	Expenses as per accounts	65,000	
	Disallowable expenses (for example)	(1,000)	(64,000)
Business income			1,000
Other income			
Rents		63,000	
Interest		36,000	99,000
Chargeable income before exempt amount			100,000
Less:	Exempt amount (75% of $10,000 + 50% of $90,000)		(52,500)
Chargeable income after exempt amount			47,500
Tax payable at 17%			8,075

For details on the taxation of clubs and similar institutions up to YA 2009, please refer to the 2014/2015 edition of this book.

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TRADE AND PROFESSIONAL ASSOCIATIONS

¶15-300 Trade and professional associations

A trade or a professional association is an association of persons formed with the main object of safeguarding or promoting the business or profession of its members. Examples of trade and professional associations are the International Chamber of Commerce and the Singapore Institute of Directors respectively. Section 11(2) governs how a body of persons carrying on as a trade or professional association is to be taxed, and applies to both incorporated and unincorporated associations, including approved companies limited by guarantee.

¶15-310 Section 11(2)

To test whether an association is carrying on a business, one needs to consider only the entrance fees and subscriptions received by the association and not the gross receipts.

Chapter 15

Section 11(2) has been amended to provide that from YA 2008, trade and professional associations are deemed to carry on a business only where more than 50% of their receipts by way of entrance fees and subscription fees from Singapore members are claimed or claimable as allowable deductions.

Up to YA 2007, trade and professional associations are deemed to carry on a business where more than 50% of receipts by way of entrance fees and subscription fees are from persons who claim or would be entitled to claim such sums as deductions under s 14.

Where an association is deemed to carry on a business, all its income from transactions with Singapore members and non-members (including entrance fees and subscriptions) are treated as receipts from a business and the association will be chargeable on profits arising from that business. Any income from transactions with foreign members would not be subject to tax.

Singapore members have been defined to mean members that are:

- persons, other than companies, resident in Singapore
- Singapore-incorporated companies excluding branches or offices located outside Singapore, or
- Singapore branches or offices of foreign-incorporated companies.

Members refer to persons who are entitled to vote at the general meeting at which effective control is exercised over its affairs.

(See IRAS e-Tax Guide "Tax Treatment under Section 11(2) of the Income Tax Act and Qualifying Conditions for Company Limited by Guarantee to be Subject to Section 11(2)", published on 8 October 2014.)

¶15-320 Assessment

The types of income normally derived by associations are entrance fees, subscriptions, business income and investment income such as interest and rents. The taxable income is ascertained in the usual way by allowing a deduction for all expenses incurred in the production of such income.

Associations may receive various kinds of donations and subscriptions from their members. The nature or purpose of such receipts should be ascertained to determine whether they are of a revenue nature. For example, a special donation to the building fund would be considered a capital receipt, but if only part of the amount is used for the specified purpose, the balance will be deemed to be of a revenue nature. On the other hand, a special subscription related to the association's anniversary celebrations would be of a revenue nature.

Unlike a club, an association that uses its premises for recreational and social purposes is regarded as using it for business purposes. It is also a common practice with some associations to provide temporary accommodation on its premises to visiting or local members. Rents and other receipts for the use of such facilities are considered as business income.

From YA 2010, whether an association is an incorporated body or not, its chargeable income is subject to tax at the normal corporate tax rate of 17% (s 43(1)). For details on the taxation of such associations up to YA 2009, please refer to the 2014/2015 edition of this book.

Example 2

The following are accounts of the operations of Leech Association in 2015.

Profit and Loss Account

	$		$
Administrative expenses	14,000	Entrance fees	27,500
Salaries	22,000	Subscriptions	45,000
Anniversary expenses	2,100	Donations (general)	10,000
Buildings — additions	6,700		
Net profit	37,700		
	82,500		82,500

Building Account

Additions and alterations	52,400	Donations	45,700
		Profit & loss a/c	6,700
	52,400		52,400

Anniversary Account

Expenses — dinner, drinks, floor show, etc		Subscriptions from members	140,000
	142,100	Profit & loss a/c	2,100
	142,100		142,100

The taxable income and tax payable for YA 2016 are as follows:

	$
Net profit as per accounts	37,700
Add: Building alterations	6,700
Chargeable income before exempt amount	44,400
Less: Exempt amount (75% of $10,000 + 50% of $34,400)	(24,700)
Chargeable income after exempt amount	19,700
Tax payable at 17%	3,349

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¶15-400 Other societies

There are various types of societies and associations that operate in Singapore, such as mutual insurance associations, clan associations, professional societies and co-operative societies. If these are not specifically exempt under s 13, the question of whether they are "mutual concerns" can be determined by applying the mutuality test.

For example, there are no provisions in the Act dealing with mutual insurance companies. If such a company provides that any surplus arising from its operations is to be distributed only to its members who maintain policies with it and, if the Comptroller is satisfied that there is "mutuality", no liability to tax will arise.

It is not unusual for a body of persons to carry on both "mutual" activities and "non-mutual" activities. In the case of the former, tax exemption applies. For the latter, however, any profits that arise will be taxable.

¶15-500 Return Form P1

All clubs and similar institutions, trade and professional associations, and management corporations, whether specifically exempt or partially or wholly taxable, are required to file annual income tax returns (Form P1) with supporting accounts and documents (s 62(1)).

Form P1 must be filed with the Comptroller by 15 April of every year (as stipulated by the annually gazetted "Notice to Partnerships, Bodies of Persons, etc, to Submit Return of Income").

Where any clubs or associations chargeable with tax for any YA have not received their Form P1 within three months from the start of that YA, they must give notice to the Comptroller of their chargeability within 14 days after the end of the third month of that YA (s 62(4)). For failure to give the due notice and/or failure to file the Form P1, they would be liable to penalties for non-compliance of the law.

CHAPTER 16

ESTATES, TRUSTS AND SETTLEMENTS

ESTATES

¶16-110 Estates

The wealth a person beneficially owns at the time of his death is known as his "estate". Where a will has been left and the Court is satisfied that the will is valid, there is "testacy". Probate is then granted to the person entrusted in the will (the executor) to handle the estate on behalf of the persons who are entitled to benefit (the beneficiaries). Where no will is made or the will made is found not to be valid, there is said to be an "intestacy". The intestacy laws in Singapore provide for the appointment of an administrator who functions as an executor of the estate and will distribute the assets in accordance with intestacy laws.

Section 2 of the Singapore *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act") defines an executor as "any executor, administrator or other person administering the estate of a deceased person". Once an executor has been appointed, s 43(1)(c) allows the Comptroller of Income Tax (the "Comptroller") to assess the executor on income accruing from assets of the deceased's estate during the period of executory administration.

The administration period commences on the day after the date of death and ends on the completion of the administration of the deceased's estate. Completion of administration normally occurs when the residue can be ascertained for distribution. During the administration period, the executor is answerable to the Comptroller for any income he derives as a representative of the estate. Additionally, the executor is responsible for realising the estate and paying the estate duty (if any, for deaths before 15 February 2008), debts and legacies. The "residue" is then distributed among the beneficiaries, if this is provided for in the will.

Where a trust was created during the lifetime of the deceased, the trustee will continue to administer the trust and distribute the trust funds. During the administration period, the trustee has tax-related obligations, similar to an executor. Where there are two or more trustees, they are jointly and severally chargeable and liable for the payment of taxes (s 60).

¶16-120 Beneficiaries of an estate

A beneficiary's entitlement to a distribution from a deceased's estate depends on his legal status as follows:

- *A general or specific legatee* — A legatee is a person who is entitled to a sum of money. A general legatee's entitlement is normally restricted to the capital sum only. A specific legatee is one who is entitled to a specific item of property, and unless otherwise provided in the will, he is also entitled to the actual income, less expenses, from that property from the date of death.
- *An annuitant* — Unless otherwise provided for in the will, an annuitant is entitled to receive periodical payments from the estate from the date of death and such payments are of an income nature in his hands.
- *A residuary beneficiary* — Such a beneficiary can have a "limited" interest or an "absolute" interest. A person with a limited interest has a right to income only from residuary property. On the other hand, a person with a right to capital, upon the residue being ascertained, has an absolute interest. A beneficiary's interest can also be "contingent", ie dependent on the happening of an event (eg an amount payable to a child on attaining the age of 21). Furthermore, the interest can be "life", ie the interest in a particular asset is granted to a beneficiary during his lifetime.

A beneficiary's statutory income is the amount received by, distributed to or applied to his benefit in the year preceding the year of assessment (YA) (s 35(10)). A beneficiary who is an individual is required to file a return Form B each year if he is a resident of Singapore or Form M if he is a non-resident. Any income derived by a non-resident beneficiary from an estate administered in Singapore can be charged to tax in the hands of the executor as an agent of the non-resident (s 53(2)).

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¶16-130 Income of deceased taxpayer

When an individual dies, there is a need to distinguish between income which accrues before and after the date of death. Any *income accruing up to the date of death* will be assessed in the deceased's name and the estate will be liable for the filing of the tax return and payment of taxes on such income. Any *income accruing after the date of death* belongs to the deceased's estate and is assessable on the executor.

Section 58 provides that the executor takes over "all rights and duties" of the deceased which were attached to the latter prior to death. Hence, the executor has to file a Form B (individual return) showing the income of the deceased up to the date of death. Personal allowances that the deceased is entitled to are granted in full and not prorated for the period he was alive. The executor must also settle the deceased's personal tax liability up to the date of death.

The Comptroller has up to the end of the third YA following the year of death to raise assessments on the deceased taxpayer (s 58(2)). After this period, the Comptroller is time barred from raising further assessments on the deceased taxpayer.

Example 1

Sam died on 30 October 2014. The Comptroller has up to 31 December 2017 to raise any assessment or additional assessment on any income that had accrued up to 30 October 2014. For YA 2015, although Sam was not alive during the whole of 2014, relevant personal reliefs would be granted in full and not prorated.

¶16-140 Income of estate

Basically, any income which accrues during the "administration period" is regarded as income of the deceased's estate. Hence, any *income accruing after the date of death* but prior to completion of administration will be assessed on the executor of the estate (s 43(1)(c)).

The statutory income of an executor of an estate is calculated in the same way as the income of any other taxable person (s 35(8)). The statutory income of a YA is computed on a preceding year basis after deducting expenses incurred wholly and exclusively in the production of the estate's income.

The following expenses would not rank for deduction in calculating the total income of the deceased's estate:

- fees paid to an executor including fees paid for liquidating the deceased's assets. However, where the executor is involved in the management of the business of a deceased's estate, the proportion of the executor's fees applicable to this management will qualify for deduction

- expenditure relating to the capital assets of the estate, and
- disbursements relating to the distribution of the estate's income.

In ascertaining the chargeable income, the executor is not entitled to deduction for personal reliefs under s 39 which is available to individuals only.

From YA 2010, an executor is liable to tax at 17% on income derived by the estate during the administration period (s 43(1)(c)).

Example 2

D died on 30 June 2012. Z was appointed his executor with powers to carry on his business. B was the sole beneficiary. Z carried on the business to 30 September 2014 after which it was transferred to B. The profits of the business for the following periods were:

	$
6 months to 31 December 2012	10,000
12 months to 31 December 2013	50,000
9 months to 30 September 2014	40,000
3 months to 31 December 2014	5,000

The statutory income of Z and B for the relevant YAs will be as follows:

		$
On Z:	YA 2013	10,000
	YA 2014	50,000
	YA 2015	40,000
On B:	YA 2015	5,000

In addition, Z, as the executor, is also liable for any tax due to the Comptroller from the deceased for the period prior to death.

Distribution to beneficiaries

Strictly, income arising from the undistributed assets of an estate is the income of the estate and not that of the beneficiaries.

Although the executor normally receives all the income of an estate, the following arrangements may arise:

- The executor could arrange for the income from an asset specifically bequeathed to a beneficiary to be paid directly to that beneficiary.
- An executor may, if the will so provides, make disbursements such as educational or maintenance expenses to the beneficiaries who are minors or incapacitated persons.
- The executor may make payments in advance of the final distribution if the executor is not specifically prohibited by the terms of the will and, in the executor's opinion, the title of the beneficiary is clear.

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For an estate administered in Singapore, the executor is allowed to deduct any income which *is received by, distributed to, or applied to* the benefit of any beneficiary of the estate *before 31 March in the year following the relevant YA* (s 35(9)). In other words, such distributions to the beneficiaries would rank for deduction for income tax purposes.

Any income received by, distributed to or applied to the benefit of a beneficiary would be taxable in the hands of the beneficiary (s 35(10)). If the beneficiaries are individuals, the income will be taxed at their personal marginal tax rates (which are likely to be lower than the executor's flat rate of 17% from YA 2010). Hence, an executor may want to reduce the assessable income of the estate to nil by distributing all income to the beneficiaries by 31 March of the year following the YA.

Additionally, in practice, the income of the estate is often regarded as that of the beneficiary from the day after the date of death. Consequently, the administration period is deemed to have begun and ended on that day and the estate will not be assessed as its income will be nil.

Example 3

Roland Chan died on 30 June 2014. If the executor distributed the whole of the income of the deceased's estate to the beneficiaries by 31 March 2016 (ie by 31 March of the year following YA 2015), the assessable income of the estate for YA 2015 would be nil.

Note that, if the practice of deeming the administration period as having begun and ended on 1 July 2014 is adopted, the estate will not be assessed.

Foreign income

Where a testator dies leaving assets, situated both in and outside Singapore, the testator's estate can be administered separately in the territories where the assets are located. If the will so provides, separate executors may be appointed in each country.

Income arising from foreign assets does not necessarily change its character to capital if it is remitted to a Singapore executor. For example, where there is only one executor and that executor is in Singapore (ie the estate is administered solely in Singapore), any income arising from foreign assets of the deceased that is remitted into Singapore is chargeable to tax here. The Singapore executor may appoint a local person in the foreign country to discharge the acts of administration on his behalf.

Where the estate of a deceased person is situated outside Singapore and the beneficiary is resident in Singapore, any distribution made by the executor of such an estate will not be deemed as income in the hands of the beneficiary. Only distributions to beneficiaries from an estate administered in Singapore can be treated as personal income of the beneficiaries (s 35(10)). Distributions by an executor from the estate of a deceased person which is administered outside Singapore are outside the scope of s 35(10)).

Filing obligations

An executor is required to file the annual tax return (Form T) in respect of the income of a deceased's estate (s 62(1)). The Form T return must show the names and addresses of the beneficiaries, their dates of birth (if they are under 21 years at the end of the basis period for which the income is returned), and the income distributed to, received or applied to their benefit.

Form T must be completed and submitted to the Comptroller by 15 April. If the form has not been received by 31 March, the executor or administrator of an estate must inform the Comptroller by 14 April of its chargeability to tax.

TRUSTS

¶16-200 Trusts

A trust is an arrangement whereby a donor or settlor agrees to transfer property to trustees who have a duty to hold and deal with it for the benefit of third parties called beneficiaries. A trustee may be an individual person (who himself may be a beneficiary), a professional adviser or a trust company.

The following paragraphs apply to a trust other than one registered under the *Business Trusts Act (Cap 31A, 2005 Revised Ed)*. The income tax treatment for a "business trust" is discussed in ¶16-300.

¶16-210 Types and creation of trusts

Types of trusts

There are essentially three types of trusts:

- *Fixed trust* — Such a trust is for named beneficiaries in defined shares. The exact shares of income or capital to which beneficiaries are entitled are spelt out in the trust instrument. The settlor settles property by transferring legal ownership to the trustee, subject to conditions on how the trustee is to apply the proceeds of such property.
- *Discretionary trust* — The trustee is given powers to decide, within defined limits, the share of each discretionary beneficiary. This type of trust provides greater flexibility and consequently is more effective where tax planning is concerned. For example, a parent transferring properties to his children via a discretionary trust vehicle could avoid exposure to estate duty liabilities (for Singapore estate duty purposes before estate duty was abolished for deaths on or after 15 February 2008). Also, changes to the beneficiaries of a discretionary trust could be made without having to incur stamp duties. Under normal circumstances, transfers and disposals of real estate or shares between family members would attract stamp duty but in a situation where such assets form part of the trust property, the duty could be avoided.
- *Unit trust* — This type of trust takes the form of an enterprise, which distributes proceeds only to those who subscribe to units in the trust. The beneficial interest is divided into units and sold to unitholders.

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Creation of a trust

A trust can be created either by will or during the lifetime of the settlor. Where it is created by will, the testator stipulates the particular assets which are to form the subject of the trust and the beneficiaries who are entitled to the income arising from such assets. The will also names the trustees who are to administer the assets, defines the trustees' powers, lays down the rules for the distribution of income and capital among the beneficiaries and specifies the period for which the trust is to endure.

Strictly, a trust created by will cannot commence until the period of executory administration has ceased. In practice, however, where the executor and trustee can, with some certainty, provide a date on which the executory administration will end and the trust to commence, the Comptroller will accept that date as the date of commencement of the trust. A mere executor as such is not a trustee. It is only after the former has fully administered and cleared the estate and ceased to be an executor that he may become a trustee, if it is so provided by the will.

Where a trust is created during the lifetime of the settlor, assets are normally transferred to the trustees by way of a donation or a gift for the benefit of third parties. The document which sets up the trust (ie the trust deed) appoints the trustees and defines their functions as to the distribution of the income and capital of the trust.

As long as the trust continues, the trustees are treated as a single and continuing body. Changes, if any, which occur in the persons who are trustees do not alter the tax liability of the trust.

¶16-220 Trust income

The following paragraphs apply to the assessment of the income of trusts other than a real estate investment trust (REIT). From YA 2010, any income derived from any trade or business carried on by the trustee will be taxed at the final tax rate of 17% at the trustee level (s 43(2A)(c)). In such instances, notwithstanding that the trustee may have a legal personality in its own right (ie a company or an individual), the trustee is regarded as a body of persons for tax purposes. Any distributions of such business income will be capital in nature and will not be subject to any further tax in the hands of the beneficiaries.

Determining a trustee's statutory income

The income of a trust is chargeable to tax on the trustee. The statutory income of a trustee (other than the trustee of an incapacitated person) for any YA is the income of the preceding year and is calculated in the same way as the income of any other taxable person (s 35(11)).

Expenses incurred wholly and exclusively in the production of income would qualify for tax deduction. If the income is from property, all expenses relating to maintenance and repairs, insurance and management of the property would be deductible. If the trustee carries on a trade or business, all expenses incurred in the production of income, which are normally allowed to a trade, would also qualify for deduction. However, expenses incurred in administering the trust or distributing the net income are not tax deductible, as they are incurred after the income is earned. For example, if a trustee receives income from a trust property, the trustee would not be able to claim a deduction for expenses incurred in managing the trust.

Due to tax adjustments, the income of a trust available for distribution to beneficiaries may not necessarily be the same as its assessable income, as shown in Example 4.

As for the beneficiary, his proportionate share of the trust's distributable income will be used as the basis for determining his share of the trust's statutory income (s 35(15)).

Example 4

A trust account or statement for the year to 31 December may be as follows:

	Rents $	*Interest* $	*Trade* $	*Total* $
Gross income	5,000	2,400	80,000	87,400
Less: Expenses	(3,500)	NIL	(45,000)	(48,500)
Net income	1,500	2,400	35,000	38,900

The adjustments to be made for income tax purposes may be as follows:

	Rents $	*Interest* $	*Trade* $
Gross income	5,000	2,400	80,000
Less: Allowable expenses	(3,000)	NIL	(28,000)
Statutory income	2,000	2,400	52,000
Total statutory income			56,400
Less: Donations (allowable under s 37(3)(c))			(4,500)
Assessable income of trust			51,900

Assessment on trustee and/or beneficiary

From YA 2010, the trustee is subject to tax at the rate of 17% on the income of the trust (s 43(1)(c)).

Where a trustee can prove to the satisfaction of the Comptroller that the beneficiaries are entitled to a share of the trust income, the corresponding share of the trust income may be charged at a lower tax rate or not charged with any tax, as the Comptroller may determine (s 43(2)). In the IRAS e-Tax Guide "Income Tax Treatment of Trusts", published on 8 October 2014, it was stated that the tax transparency treatment would be accorded to beneficiaries who are residents of Singapore. In such instance, the trustee will not be taxed while the beneficiaries will be taxed on the distributions received. Note that this transparency treatment will not apply to any income derived from any trade or business carried on by the trustee. Such business income will be subject to the final tax rate of 17% at the trustee level. Any distributions of such business income will be exempt from tax in the hands of the beneficiaries.

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Generally, the trustee will be assessed on the trust income at the rate of 17% under the following circumstances:

- where the whole or part of a beneficiary's entitlement is not distributed by the trust
- where the beneficiary is a non-resident
- where the beneficiary's identity or entitlement is not clear, or
- where the collection of tax from the beneficiary poses difficulties.

¶16-230 Tax incentives for trusts

Approved trustee companies

An approved trustee company (ATC) is subject to tax at the concessionary rate of 10% on income derived from providing specified trustee and custodian services to non-residents in respect of designated investments (s 43J). A trustee company is defined to mean a company licensed as a trust company under the *Trust Companies Act (Cap 336, 2006 Revised Ed)* or any company that is exempted from holding a trust business licence (s 43J(2)). Application by a trustee company for approved status is to be made to the Monetary Authority of Singapore (MAS).

The types of trustee and custodian services which would qualify for the concessionary tax rate of 10% are given in the *Income Tax (Concessionary Rate of Tax for Approved Trustee Companies) Regulations* and the MAS circulars (*FDD Cir 04/2002* dated 2 July 2002 and *FDD Cir 08/2006* dated 8 June 2006).

Prescribed locally administered trust (PLAT)

Qualifying domestic trusts and holding companies that are established for the purposes of the trust are granted tax exemption on their locally sourced investment income and foreign-sourced income (s 13Q). Beneficiaries receiving any distributions out of such exempt income will also not be taxed.

The locally administrated trust must be administered by an approved trustee company in Singapore. Every settlor of the PLAT must be an individual. The beneficiaries of the PLAT could be individuals or a charitable institution, trust or body of persons established for charitable purposes. A further requirement is that at least one of the beneficiaries is not a settlor of the trust.

Foreign trusts

To further encourage the development of trustee business in Singapore, s 13G provides that certain income of foreign trusts (or eligible holding companies established for the purposes of such foreign trusts) may be eligible for exemption from Singapore income tax if the trust is administered by a trustee company as defined in s 43J. The tax exemption will also apply to the following beneficiaries receiving their share of the exempt trust income:

(a) an individual who is neither a citizen of nor resident in Singapore, or

(b) a company which is neither incorporated nor resident in Singapore and where such a company:

  (i) has not more than 50 shareholders and all of its issued capital is beneficially owned, directly or indirectly, by persons who are neither citizens of nor resident in Singapore, or

(ii) has more than 50 shareholders and not less than 95% of the total number of its issued shares are beneficially owned, directly or indirectly, by persons who are neither citizens of nor resident in Singapore (s 13G(2)).

A trust is regarded as a "foreign trust" if (*Income Tax (Exemption of Income of Foreign Trusts) Regulations*, reg 2A):

- it is a trust created in writing and all the settlors and beneficiaries of the trust are:
  - (a) individuals who are neither citizens of nor resident in Singapore, or
  - (b) foreign companies, or
- it is a unit trust and the whole value of the unit fund is beneficially held, directly or indirectly, by:
  - (a) individuals who are neither citizens of nor resident in Singapore, or
  - (b) foreign companies.

The foreign trust income which is exempt from tax is prescribed in the *Income Tax (Exemption of Income of Foreign Trusts) Regulations* and includes:

- interest and dividends derived from outside Singapore and received in Singapore in respect of designated investments
- interest from deposits with and certificates of deposit issued by banks approved under the Act and from Asian dollar bonds approved under the Act
- rents, royalties, premiums and any other profits arising from property that are derived from outside Singapore and received in Singapore on or after 1 June 2003
- gains or profits realised from the sale of designated investments
- fees and compensatory payments derived on or after 27 February 2004 from qualifying securities lending or repurchase arrangements, and
- discounts derived from outside Singapore and received in Singapore on or after 27 February 2004.

Following the 2012 Budget, the list of "specified income" has been enhanced and revised as an exclusion list. Unless excluded, all income and gains derived on or after 17 February 2012 from "designated investments" are considered as "specified income" and, hence, qualify for tax exemption.

The definition of "designated investments" for the purposes of the foreign trust tax exemption is the same as that provided under the *Income Tax (Exemption of Income of Non-Residents Arising from Funds Managed by Fund Managers in Singapore) Regulations*. Note that "designated investments" is regularly reviewed to recognise new instruments.

Note that rental income derived in respect of immovable property in Singapore is not exempted from tax under the *Income Tax (Exemption of Income of Foreign Trusts) Regulations*.

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Foreign charitable trusts

Tax exemption has been granted for income derived from (s 13O):

(a) any funds or assets in any foreign account of a philanthropic purpose trust constituted on or after 18 February 2005 and administered by a trustee company in Singapore, and

(b) any funds or assets of an eligible holding company established for the purposes of that philanthropic purpose trust which are held for the foreign account of that trust.

A philanthropic purpose trust is a trust established in writing under any law for the benefit of the public and which falls within any of the following prescribed purposes (s 13O(3)):

(a) the prevention or relief of poverty

(b) the advancement of education

(c) the advancement of religion

(d) the advancement of health

(e) the advancement of citizenship or community development

(f) the advancement of the arts, heritage or science

(g) the advancement of environmental protection or improvement

(h) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage

(i) the advancement of animal welfare

(j) the advancement of any sport which involves physical skill and exertion, and

(k) any other purpose beneficial to the community.

An eligible holding company (EHC) refers to a foreign-incorporated company which is set up to hold assets of a philanthropic purpose trust administered by a trustee company. The shares of the EHC have to be held by the trustees of the philanthropic purpose trust or by their nominee. The operations of the EHC must consist solely of trading or making investments for the purpose of the philanthropic purpose trust. The EHC is not entitled to claim any double taxation relief under any Singapore tax treaty or any unilateral tax credit under s 50A.

The funds in the foreign account, in relation to a philanthropic purpose trust, have to be injected solely by settlors who are:

(a) individuals who are neither citizens of Singapore nor resident in Singapore, unless the Minister otherwise by regulations prescribes

(b) companies, each of which:

   (i) is neither incorporated nor resident in Singapore

   (ii) does not have a permanent establishment (PE) in Singapore other than a trustee company

   (iii) does not carry on a business in Singapore

   (iv) does not beneficially own more than 20% of the total number of the issued shares of any Singapore incorporated company

(v) does not have at least 20% of the total number of its issued shares beneficially owned, directly or indirectly, by a company which:

- has a PE in Singapore other than a trustee company
- carries on a business in Singapore, or
- beneficially owns more than 20% of the total number of the issued shares of any Singapore incorporated company, and

(vi) has:

- if it has not more than 50 shareholders, all of its issued shares beneficially owned, directly or indirectly, by persons who are neither citizens of Singapore nor resident in Singapore, or
- if it has more than 50 shareholders, not less than 95% of the total number of its issued shares beneficially owned, directly or indirectly, by persons who are neither citizens of Singapore nor resident in Singapore

(c) foreign trusts

(d) other philanthropic purpose trusts that inject funds or assets from their foreign accounts, or

(e) any other persons that are neither:

(i) resident in Singapore, nor

(ii) constituted or registered under any written laws in Singapore.

The tax exemption will apply to the foreign charitable trust even if the beneficiaries are neither foreign companies nor individuals who are neither Singapore residents nor Singapore citizens.

Unit trusts

Section 10B provides tax relief to approved unit trusts whose unitholders are resident individuals or foreign investors without PEs in Singapore. Regulation 2 of the *Income Tax (Approved Unit Trust) Regulations* provides further details on the scheme.

¶16-240 Filing obligations

A trustee is required to file a tax return (Form T) each year in respect of the income of a trust accruing in, derived from or received in Singapore (s 62(1)). The return must show the names and addresses of the trustees, and the location of the administration of the trust.

Particulars of all the beneficiaries must also be provided, ie their names and addresses, the basis of entitlement, their respective shares and whether they occupy any property of the trust for residential purposes.

The due date for the completion and submission of Form T by trustees is 15 April. Singapore resident beneficiaries are required to file Form B while non-Singapore resident beneficiaries file Form M.

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BUSINESS TRUSTS

¶16-300 Business trusts

For income tax purposes, a business trust, ie one that is registered under the *Business Trusts Act (Cap 31A, 2005 Revised Ed)*, is treated like a company. This is because the economic purpose, structure and operation of a business trust are similar to those of a company. The income tax treatment of such a trust is similar to that of a company under the one-tier system. The partial tax exemption scheme (see ¶2-850) will also apply to a business trust. From YA 2010, the income of a business trust is subject to tax at the rate of 17% at the trustee level. The tax payable at the trustee level is the final tax.

The unitholders of the business trust are not taxed on their share (whether distributed or not) of the statutory income of the trustee and are not allowed any credit for the tax paid by the trustee.

The tax treatment applicable to a company on the following will also apply to a business trust, subject to the conditions in s 36B:

- relief for tax suffered in a foreign tax jurisdiction on its foreign-sourced income
- election under s 24 for sale of property between persons under the same control
- carryover and/or utilisation of unabsorbed capital allowances, business losses and unabsorbed donations, and
- transfer of qualifying loss items under the group relief scheme.

(See IRAS e-Tax Guide "Income Tax Treatment of a Trust Registered under the Business Trusts Act", published on 10 October 2014.)

¶16-310 Relief for foreign tax suffered

A business trust that is tax resident in Singapore will be allowed to claim relief for any tax suffered in treaty countries on its foreign-sourced income under the relevant Singapore tax treaties. A Singapore resident business trust can also claim unilateral tax relief under s 50A for tax suffered in a country that does not have a tax treaty with Singapore. The discussions on such claims for reliefs from double taxation can be found in Chapter 13 (at ¶13-100ff).

A business trust will be considered a resident of Singapore if the following conditions are satisfied:

(a) the trustee in his capacity as the trustee of the business trust carries on a trade or business in Singapore, and

(b) the control and management of the business is in Singapore.

¶16-320 Election under s 24 for sale of property between persons under same control

Section 24 allows the tax written-down value of an asset to be transferred from the seller to the buyer for income tax purposes if:

- the seller has control over the buyer

- the buyer has control over the seller, or
- a third party has control over both the seller and buyer.

The tax effect of such a transfer is discussed in ¶8-270.

The meaning of "control" for the relevant parties is defined in s 36B(1)(b). Under this section, the following person is deemed to have control over a registered business trust:

(a) a company holding more than 50% of the units in the registered business trust, or

(b) another registered business trust holding on trust for their unitholders more than 50% of the units in the first mentioned registered business trust.

In the case of a registered business trust, it is deemed to have control over a company if:

(a) the trustee-manager of the registered business trust holds on trust for its unitholders more than 50% of the total number of issued shares of the company, or

(b) the unitholders of the registered business trust hold more than 50% of the total number of issued shares of the company.

As stated in the IRAS e-Tax Guide "Income Tax Treatment of a Trust Registered under the Business Trusts Act", published on 10 October 2014, an election under s 24 will be allowed where the control relationship between the seller and the buyer (denoted by "S" and "B", as the case may be) is as follows:

- company S owns more than 50% units in business trust B
- unitholders of business trust B owns more than 50% shares of company S
- trustee of business trust S holds more than 50% units in business trust B on trust for the unitholders of business trust S
- trustee of business trust B holds more than 50% shares of company S on trust for the unitholders of business trust B
- another company C owns more than 50% shares of company S or more than 50% units in business trust S, and more than 50% units in business trust B, or
- trustee of another business trust C holds, on trust for its unitholders, more than 50% shares of company S or more than 50% units in business trust S, and more than 50% units in business trust B.

¶16-330 Carry forward of unabsorbed capital allowances, business losses and donations

A business trust, similar to a company, is allowed to carry forward the following for set-off against its chargeable income of subsequent YAs subject to satisfying certain tests (s 36B(1)(a)):

- unabsorbed capital allowances, ie wear and tear allowances for plant and machinery, industrial building allowances (IBA) and writing-down allowances (WDA) for intellectual property (IP) rights, indefeasible right of use (IRU) and approved research and development (R&D) cost-sharing agreements

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- business losses, and
- approved unabsorbed donations.

The following tests for the carryover and the utilisation of the above in the case of a company carrying on a trade, business or profession (TBP) will also apply to a business trust and are explained in Chapter 9 (at ¶9-100ff):

- The business trust, like the company, must satisfy the "business continuity test", ie to continue carrying on the same TBP in respect of which the capital allowances were granted, before the unabsorbed capital allowances can be carried forward to subsequent YAs.
- A business trust has to satisfy the "unit-holding test" similar to the shareholding test for a company. A business trust will satisfy the unit-holding test if its unitholders are substantially the same on both the relevant dates:
  - the last day of the year in which the capital allowances arose or in which the business losses and/or donations were incurred, and
  - the first day of the YA in which such unabsorbed capital allowances, business losses and/or donations are allowed to be set off against the company's chargeable income.

  Unitholders are deemed to be substantially the same if the same unitholders are entitled to not less than 50% of:
  - any residual profits available for distribution, and
  - any residual assets available for distribution on a winding up.

¶16-340 Loss transfer system of group relief

A business trust, if it qualifies as a member belonging to a group of companies under the group relief scheme (s 37C), can transfer its current year's loss items (capital allowances, business losses including further deductions, and/or approved donations) to other qualifying members of the group. Similarly, a business trust can claim a deduction for the current year's loss items from other qualifying members of the group. The loss transfer system is explained in ¶9-700.

To qualify for the group relief, a business trust must be established in Singapore and its trust deed must be executed in Singapore and be governed by Singapore laws. The units in a business trust will be used in lieu of the ordinary shares of the company to determine whether the business trust can be regarded as a member of the same group (s 36B(1)(c)).

SETTLEMENTS

¶16-400 Settlements: Anti-avoidance measures

Section 31 is designed to prevent "settlements" from being used as tax avoidance schemes. Basically, an individual (settlor) may enter into settlements under which income or income-producing assets are transferred to other persons, normally the settlor's children. The avoidance is achieved by structuring transactions such that the tax liability of the settlor (who is likely to be in the higher income tax rate bracket) is transferred to his relatives (who are likely to be in a lower income tax rate bracket or have no income at all).

A settlement may be oral or by a written deed. For the purposes of s 31, a "settlement" is broadly defined to include any disposition, trust, covenant, agreement (whether reciprocal or collateral), arrangement or transfer of assets or income other than:

- a *bona fide* settlement made for valuable and adequate consideration
- a settlement arising from a court order, or
- an agreement made by an employer to pay fair and reasonable remuneration, pension or a lump sum to an employee or to his widow, relative or dependant after his death (s 31(8)).

A "settlor", who may be liable to tax on settlement income or assets by virtue of s 31, includes:

- any person by whom a settlement was made or entered into directly or indirectly
- any person who has provided (or undertaken to provide) funds or credit directly or indirectly for the purpose of a settlement, or
- any person who has entered into a reciprocal arrangement for another person to make or enter into a settlement (s 31(8)).

Thus, a father who makes a settlement and pays the money to his daughter is a "settlor". Similarly, where A who is a friend (not a relative) makes a settlement on B's child on the understanding that B provides a similar settlement on A's child, both A and B will be regarded as settlors in respect of the settlements on their respective children.

According to s 31, the income or assets comprised in a settlement are regarded as income or assets of the settlor (so that no tax benefit may arise from the settlement) if the settlement is made:

- in favour of a minor relative
- with provision for income or assets to revert to the settlor upon revocation, or
- where the settlor makes use of settlement income or assets to which he is not entitled.

The above three kinds of settlement are discussed further below.

Settlements to minor relatives

Where the terms of a settlement are such that:

- during the life of the settlor, income or assets are payable, applicable to or for the benefit of a relative of the settlor, and
- the relative is unmarried and under 21 years old at the beginning of a YA,

the income or the assets are deemed to be income of the settlor (s 31(1)).

If the relative on whom the settlement is made is either married or over 21 years of age at the beginning of a YA, the settlement will not be caught by s 31(1).

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A "relative", for the purposes of s 31, means a wife, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin of the settlor.

A "child" has been defined to include a stepchild, a child who has been *de facto* adopted by the settlor or the settlor's spouse, and a child of whom the settlor has custody or maintains (wholly or partly) at his own expense (s 31(8)).

Example 5

Merril Lee owns an apartment that is being rented out. She subsequently transferred the property to her unmarried cousin Marvel Lee on the latter's 18th birthday. Since Marvel is below 21 years old, the rental income received between the transfer date and the beginning of the YA in which Marvel turned 21 is deemed to be Merril's income for tax purposes.

Settlements reverting to settlor upon revocation

Section 31(2) targets any settlement that is revocable and, in the event of its revocation, the settlor or the settlor's spouse becomes beneficially entitled to the income or property comprised in the settlement. All income arising from such a settlement is deemed to be income of the settlor.

Example 6

F has several immovable properties in Singapore from which he receives rental income. He agrees, in writing, to settle all the immovable properties in Singapore and the income therefrom on his married daughter, D, who is 25 years old. One of the terms of the agreement stipulates that F can revoke the settlement at any time and when he does so, the immovable properties in Singapore will revert to him. In such circumstances, the rental income throughout the period of settlement is F's income and not D's.

However, s 31(2) does not apply where the settlor, or the settlor's spouse, becomes beneficially entitled to the income or property of the settlement only because the beneficiary of the settlement dies before him (s 31(3)).

Example 7

Same as Example 6, except that D is to receive the rental income so long as she lives and the immovable properties in Singapore and the right to the income revert to F only upon her death. Section 31(2) would not apply and the income during the term of the settlement is the income of D and not F.

Where settlor uses income of settlement

If the settlor, any of his relatives, or any person under the settlor's or his relative's control, disregards the provisions of a settlement and makes use of the income of the settlement to which they are not entitled, the income so used is deemed to be that of the settlor (s 31(4)).

Example 8

A father makes a settlement of $5,000 per annum on his married son. By an agreement, the son lends $4,000 back to his father every year at an annual interest rate of 10%. The whole of the $4,000 would be deemed to be the income of the father for every YA during which the loan is taken.

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CHAPTER 17

INCOME TAX ADMINISTRATION

¶17-000 Introduction

This chapter deals with the administrative machinery by which income tax is levied and collected. Specifically, it examines the provisions of the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act") that:

- call for returns and notices to be filed and which set in motion assessment proceedings

- provide for the assessment of total income and the collection and repayment of tax
- establish the procedure for objecting to assessments and for appealing to the Board of Review, the High Court and the Court of Appeal, and
- impose penalties for making negligent or fraudulent returns or for failure to make returns or comply with the requirements of the Act.

RETURNS

¶17-110 Types of returns

Section 62 provides for the Comptroller of Income Tax (the "Comptroller") to issue a notice requiring a person to furnish a return of total income and all information relevant thereto. The Comptroller is not required to specify the purpose for which the information is required, provided it is clear that the information is required for the purposes of the Act (*OLM v Public Prosecutor* (1950–1985) MSTC 93; (1966) 1 MLJ 282).

The forms of returns are prescribed by the Comptroller. A taxpayer engaged in an employment, business, profession or vocation must furnish all particulars required by the applicable return form. The main types of return forms are as follows:

- Form B for individuals (or Form B1, a simpler form for individuals with income from sources other than from a trade, business, profession or vocation)
- Form C for companies
- Form P for partnerships
- Form P1 for clubs, management corporations and pension and provident funds
- Form P2 for charitable institutions
- Form M for non-resident individuals, and
- Form T for trusts and estates.

¶17-120 Taxpayers' filing obligations

Filing period

Where a return form has been issued by the Comptroller, a taxpayer must complete it regardless of his taxability, and forward it to the Inland Revenue Authority of Singapore (IRAS) by the relevant due date that is notified each year in the Government *Gazette* (s 62(1)). The gazetted due date is 15 April for all returns except Form C. The Comptroller may, on a taxpayer's application, grant an extension of time for the taxpayer to file the return. The application for extension of time to submit the return has to be made before 31 March. The due date for submission of Form C by companies is 30 November and no further extension of time to file the return is allowed.

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As an administrative practice, a dormant company is not required to submit a Form C if it furnishes to the IRAS a statutory declaration on its dormant status. A summary of the relevant due dates can be found in ¶17-700.

Dormant companies and exempt private companies with annual revenue below the current prescribed threshold of $5m are no longer required under the *Companies Act (Cap 50, 2006 Revised Ed)* to have their accounts audited. The IRAS will accept the unaudited accounts submitted by such companies. Where the companies decide to have their accounts audited, they are required by the IRAS to submit their audited accounts together with their tax returns.

(See IRAS e-Tax Guide "Review of Companies' Income Tax Filing Requirement in View of Audit Exemption Under the Companies Act", revised on 28 June 2004.)

Section 62(4) requires every person chargeable to tax for any year of assessment (YA) and who has not received a return form within three months from the start of that YA to give notice to the Comptroller of his chargeability within 14 days after the end of the third month of that YA. In practice, as a result of a notice published in the Government *Gazette* annually, a taxpayer is required to obtain the relevant return form from the Comptroller if the taxpayer has not received one by 15 March (30 April for companies).

When an individual first arrives in Singapore, the individual must give notice of his chargeability to income tax within one month of his arrival (s 62(5)).

Where a taxpayer has sent a completed return of income through the post in the envelope provided with the return, this posting is sufficient compliance with the Act (*CIT v CPS* (1950–1985) MSTC 515; (1952) MLJ 81).

In the case of an employee whose employer is not based in Singapore, the IRAS will normally accept a request for extension for the submission of the employee's income tax return and the payment of tax by instalments if the employee submits to the IRAS a banker's guarantee or a guarantee from a company registered in Singapore.

The Comptroller is empowered to exempt any class of persons as he thinks fit from the liability to file a return (s 62(2)). However, note that the Comptroller still has the right to assess such a person if that person fails to submit a return within a reasonable period of time after receiving a request from the Comptroller for submission of the return (s 72(1)).

Furnishing estimated chargeable income (ECI)

From YA 2009, the requirement to furnish an estimate of one's chargeable income applies to all persons other than individuals and Hindu joint families who have not made a return for the YA. The estimate has to be furnished within three months after the end of the accounting period relating to that YA (s 63(1)). The requirement to furnish an ECI also applies to the following persons who have not filed their returns for that YA:

(a) individuals or Hindu joint families who are carrying on or exercising any trade, business, profession or vocation (s 63(1A)), and

(b) partnerships (s 71(3)). In addition to the ECI, the partnership must furnish the names and identification numbers of all partners together with each partner's share of the partnership income.

Note that the concept of "Hindu joint family" was removed from the Act with effect from YA 2013.

An ECI enables the Comptroller to raise an estimated assessment with reasonable accuracy. If the taxpayer does not provide an ECI, the Comptroller may raise an assessment based on his own estimate. Failure to furnish an ECI within the stipulated period without reasonable excuse is an offence.

A company is required to file a "nil" ECI if it has no chargeable income.

The submission of the ECI by the taxpayer or its tax agent can be done by using the prescribed ECI forms downloadable from the IRAS website at www.iras.gov.sg or electronically via IRAS' *myTax Portal*.

Electronic service

The Comptroller has provided an electronic service for (s 8A):

(a) the filing or submission of any return, estimate, statement or document, or

(b) the service of any notice by the Comptroller.

Each taxpayer would be assigned an authentication code and an account with the electronic service.

An "authentication code" is an identification or identifying code, a password or any other authentication method or procedure which is assigned to a person for the purposes of identifying and authenticating the access to and use of the electronic service by that person. An "account with the electronic service" means a computer account within the electronic service which is assigned by the Comptroller to a person for the storage and retrieval of electronic records relating to that person (s 2(1)).

Any person who is required to file or submit any return, estimate, statement or document may do so himself through the electronic service or through an agent authorised by him.

Filing on behalf of others

The Comptroller can require a person to furnish a return on behalf of another person if the former is in receipt of or has control over the latter person's income (s 69). For example, a trader who sells goods on behalf of a non-resident person may be required to furnish a return of the non-resident's activities in Singapore.

A trustee, guardian, curator or committee of any incapacitated person having the direction, control or management of the property or concern of any such person may be made responsible for the returns of such person. This also applies to a non-resident's trustee, guardian or committee, or to his attorney, factor, agent, receiver or manager.

Incorrect, negligent or fraudulent returns

Sections 95, 96 and 96A provide for varying degrees of penalties for incorrect returns, depending on the severity of the offence (see ¶17-620).

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In *CGH v Public Prosecutor* (2000) MSTC 7,387, a case that involved the former s 96 "Penal provisions relating to fraud, etc", Chief Justice *Yong* expressed his agreement with the interpretation of the term "wilfulness" in *NCP v Public Prosecutor* (1950–1985) MSTC 573 (*Ng Chwee Poh v PP* (1977) 2 MLJ 203 at p 237–8) to mean an act done with intention and knowledge, and "knowledge" could be proved by circumstantial evidence rather than by direct evidence to be gathered from the acts and conduct of the taxpayer.

Section 96 deals with tax evasion and applies to a person who wilfully with intent evades or assists any other person to evade tax under the following situations:

(a) omits from a return under the Act any income which should be included

(b) makes any false statement or entry in any return made under the Act, or

(c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of the Act.

Section 96A, on the other hand, deals with serious fraudulent tax evasion and applies to a person who wilfully with intent evades or assists any other person to evade tax under the following situations:

(a) by preparing, maintaining or authorising the preparation or maintenance of any false books of account or other records, or by falsifying or authorising the falsification of any books of account or records, or

(b) by using any fraud, art or contrivance, or by authorising the use of any such fraud, art or contrivance.

Note that penalties under s 95 and 96 also apply to a person who is exempted from the liability to deliver a return under s 62(2), for failure to give the notice required under s 76 or for giving any false statement or entry in such notice.

Record-keeping requirements

Every person who carries on a trade, business or profession (TBP) is required to keep proper accounting records, invoices, receipts, etc, to enable his income and allowable deductions to be readily determined by the Comptroller (s 67). A taxpayer who wishes to dispense with issuing receipts is no longer required to seek approval from the IRAS, but must still ensure the completeness and accuracy of his records (IRAS e-Tax Guide "Waiver of Requirement to Seek IRAS' Approval When Not Issuing Receipts", published on 8 July 2003).

For a company, the Comptroller normally requests for the company's audited accounts to satisfy himself that the company's income is correctly stated in the income tax return.

From YA 2008, business records have to be retained for five years from the YA to which they relate (s 67(1)). Up to YA 2007, the record-keeping period was seven years.

From 1 January 2014, the IRAS has further simplified the record-keeping requirements for qualifying small businesses. These small businesses will only need to keep business records (eg registers, listings) and not source documents such as receipts and invoices. However, do note that the IRAS may still request the original business records for verification purposes. Further details are provided in the IRAS e-Tax Guide "Simplified Record Keeping Requirements for Small Businesses (With Effect From Jan 2014/Year of Assessment 2015)", published on 31 December 2013.

¶17-130 Returns and notices to be issued by employers

Every employer is required to issue the following returns and notices (a summary of the details can be found in ¶17-700):

- Employees' return of remuneration (s 68(2))

  Employers are required to complete a return of remuneration (Form IR8A) for every full-time resident employee, part-time resident employee or non-resident employee, company director (including non-resident director) and pensioner. In addition, employers must submit an appendix together with the return of remuneration to report details of benefits-in-kind provided to the employees (Appendix 8A) and details of any gains or profits derived by employees from the exercise of stock options to acquire shares in a company incorporated in Singapore under the Employee Stock Option Plan (ESOP) or Employee Share Ownership Plan (ESOW) (Appendix 8B). The requirement to report any gains or profits from the exercise of stock options will still apply, notwithstanding the cessation of their employment at the time the gains or profits are derived (s 68(2B)).

- Notice of cessation of employment of non-Singapore citizens (s 68(5))

  Written notice (Form IR21) must be given at least one month before the employee ceases to be employed, although the Comptroller may accept a shorter reasonable notice. If the employee is a Singapore permanent resident who is changing jobs and not leaving Singapore, the IRAS has clarified that notification is not required.

- Notice of departure of non-Singapore citizen employees (s 68(6))

  Written notice (Form IR21) must be given when the employee intends to leave Singapore for a period of more than three months. The notice must be given at least one month before his departure, although a shorter reasonable period may be accepted. A notice is not required if:

  - the employee has to leave Singapore regularly in the course of his employment (s 68(6A))
  - the employee is under a short-term employment contract of not more than 60 days (except when the employee is a company director, a public entertainer or an individual carrying out a profession, vocation or employment of a similar nature)
  - the employee is under an employment contract for 183 days or more in any calendar year and earning a total income of less than $20,000
  - the employee is physically present in or worked in Singapore for 183 days or more within a continuous period straddling two years and earning a total income of less than $20,000 in each calendar year (except when the employee is a company director, a public entertainer or an individual carrying out a profession, vocation or employment of a similar nature), or

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- the employee is physically present in or worked in Singapore for three consecutive years and earning a total income of less than $20,000 in each calendar year.

See ¶17-410 for an employer's obligation to withhold monies due to such employee.

For the purposes of s 68, any director of a company, or any person engaged in the management of a company, is deemed to be an "employee" in respect of whom the above notices must be given (s 68(3)).

¶17-140 Inspection and investigation powers

The Comptroller is given very wide powers to obtain further information on the income of taxpayers.

To obtain fuller information than what is provided in a return, or to ascertain whether or not a person is indeed chargeable to tax, the Comptroller may, by notice in writing, require a taxpayer or any other person to provide:

- further or fuller returns (s 64)
- documents for inspection (s 65) — "document" is defined broadly to include written materials as well as data kept in electronic format or other medium (eg disc, tape, film, photograph, paper, etc) (s 65(2))
- a statement containing particulars of bank accounts, details of assets and liabilities, etc (s 65A) — a taxpayer who has received a notice from the Comptroller to this effect must comply with the notice regardless of how busy the taxpayer is with his professional work (*Public Prosecutor v AWSK* (1991) 1 MSTC 7,136)
- a return of income on behalf of another person (eg a representative or agent may be required to furnish a return on behalf of his principal) (s 69).

The Comptroller is also empowered to access, inspect, copy, check, make extracts or take possession of any document, computer, device, computer program, computer software or computer output, or information, code or technology which has the capability of retransforming or unscrambling encrypted data into readable format, and to require the reasonable assistance of any person concerned with the operation of any computer, device, apparatus or material (s 65B).

The Comptroller is given very wide powers under s 65B to obtain information. To facilitate access to information, the Comptroller has full and free access to all buildings, places, books, documents and other papers for any of the purposes of the Act. The Comptroller may take possession of books and relevant documents or copy or make extracts from them.

Section 61B of the Malaysian *Income Tax Ordinance 1947* is the equivalent of s 65B of the Singapore Act. The limits of the Malaysian s 61B were tested in the Malaysian case of *Public Prosecutor v H* (1950–1985) MSTC 295; (1965) MLJ 28.

It was held that these statutory powers must be exercised *bona fide*, reasonably, without negligence and only for the purpose for which they were conferred, that is, for income tax purposes.

Taxpayer audits

The IRAS has a systematic method to select taxpayers for field audits and identify industries and professions for routine audits. These audits involve an examination of the taxpayers' books, records and financial affairs to verify that their returns comply with the tax law. By these audits, the IRAS had uncovered common errors that include understatement of income, overstatement of purchases and other expenses, wrongful claims for expenses that are prohibited under s 15(1), failure to ascertain the actual closing stock value, failure to report income from sources such as rent and director's fees, and failure to report employees' benefits, such as transport and holiday allowances, in their returns of remuneration (Form IR8A) (IRAS e-Tax Guide "Taxpayer Audit", revised on 31 July 2007).

Note that the types and amounts of penalties for such errors would depend on the severity of the offences.

Other powers

The Comptroller is also empowered by the Act to:

- recover tax from a taxpayer who is leaving the country (s 86)
- make advance assessments or additional assessments (s 73 and 74)
- waive small assessments where the tax payable is $15 or another prescribed amount (s 75)
- approve or withdraw approval of any pension or provident fund (s 5), and
- approve friendly societies for exemption (s 13(1)(f)(i)).

Professional misconduct

Section 6(11) provides the Comptroller with the power to make a complaint to the "appropriate authority" in relation to any professional misconduct by a person in the person's professional dealings with the IRAS. The Comptroller may, if necessary, provide such an authoritative body with any documents or information relevant to the complaint. The "appropriate authority" in such cases will be the professional body with whom the person concerned is registered.

The effect of this subsection is that the position and obligations of accountants representing taxpayers in negotiations with the Comptroller are made similar to those of legal advisers representing parties in a court of law. It is submitted that a tax agent owes a duty to the Comptroller to investigate the truth and correctness of the submission he makes on behalf of the taxpayer and not merely to act as the taxpayer's post office in transmitting information.

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ASSESSMENTS

¶17-210 Notice of assessment

Section 72 empowers the Comptroller to raise income tax assessments. An assessment is normally made on the basis of the information provided by a taxpayer or his agent in the relevant return of income. If a return form is not submitted or if the Comptroller is not satisfied with the information provided therein, the Comptroller may proceed to make an assessment to the best of his judgment.

The notice of assessment is a statutory form. Except where the Act provides specifically that service is to be effected either personally or by registered post, the notice may be served on a person personally, by post, or by transmitting an electronic record of the notice to the person's account with the electronic service where the person has given his consent for the notice to be served on him through the electronic service (s 76(1)). The term "electronic record" has the same meaning as in the *Electronic Transactions Act (Cap 88, 2011 Revised Ed)*.

In any YA, one or more of the following notices of assessment may be issued to a taxpayer:

- An original (or first) notice of assessment (Form IR 9) is issued when no previous assessment for the particular YA has been raised.
- An amended notice of assessment (Form IR 56) is issued when the revised tax liability is determined to be less than the amount stated in the original notice. The amended notice of assessment will then supersede the original notice for the particular YA.
- An additional notice of assessment (Form IR 61A) is issued when the revised tax liability is determined to be more than the amount stated in the original notice. The additional notice of assessment will then supplement the original notice for the particular YA.

Chapter 17

Circumstances under which an original notice of assessment may subsequently be found to have been over- or under-assessed include:

- where the original assessment was based on ECI and subsequent events indicated that the estimates were too high or low
- where there were errors or omissions in the tax return submitted by the taxpayer, and
- where there were errors or omissions in the assessment raised by the Comptroller.

Even if there is no tax payable, the Comptroller must issue to the taxpayer a notice to that effect (s 76(1)(b)). The issue of such notice will enable a taxpayer with unabsorbed tax losses or allowances to file a written notice of objection, within the stipulated period, should any disagreement over the figures arise (s 76).

The Comptroller is empowered to raise an amended assessment on a person (s 74A):

(a) who, while being required to be registered under the *Goods and Services Tax Act (Cap 117A, 2005 Revised Ed)* (the "GST Act"), has failed to register, and has been so registered on or after 1 December 2005, and

(b) whose income chargeable to tax for any YA relating to the basis period for which the person ought to have been so registered includes an amount in respect of output tax paid or payable under the GST Act.

The amended assessment raised by the Comptroller, according to his best judgement, is to give relief in respect of the amount of output tax paid or payable. This is to ensure that income tax would not be imposed on the taxpayer in respect of that amount which he is to account for as output tax under the GST Act (see Chapter 21 at ¶21-110ff).

¶17-220 Estimated "best judgment" assessments

The Comptroller has the power to raise an assessment on the estimated income of a taxpayer where (s 72(3)):

- the taxpayer has failed to make a return as required by law, or
- in the opinion of the Comptroller, an incorrect or incomplete return has been made (eg where the taxpayer was unable to produce certain documents to support the entries in his books (*MK* (1954) SB XII)).

Section 74 empowers the Comptroller to assess a taxpayer to additional tax "at such amount or additional amount as according to his judgment ought to have been charged" within the YA or within four years after the expiry thereof (discussed further in ¶17-240).

The Comptroller may raise an estimated assessment if he does not accept a taxpayer's contention that the taxpayer is not liable to tax on the gains from any particular source. Examples are:

(a) a company has made a substantial gain on the sale of property that has been part of its fixed assets for many years, and

(b) an individual has made a gain on the sale of shares.

Basis of Comptroller's "best judgment" assessment

The basis of estimated assessment by the Comptroller is often disputed by the taxpayer. Normally, the Comptroller takes the following factors into consideration when making such an assessment:

- the assessment of the last preceding year
- the taxpayer's state of affairs in previous years as they relate to the taxpayer's returns and assessments
- local knowledge and reputation in relation to the taxpayer
- the average rate of profits made by taxpayers carrying on a similar trade, and
- any other information available to the Comptroller including personal knowledge, observations and assessment of the taxpayer's trade.

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The following principles apply to estimated "best judgment" assessments:

- there must first be a reasonable opinion that a liability to tax exists
- once such an opinion is formed, the amount for assessment, although inevitably based on subjective estimates, must not only be reasonable but legitimate (*TUV v CIT* (1950–1985) MSTC 546; (1963) MLJ 19)
- the subjective estimates should be based on the facts and material available, ie gains or losses incurred in previous years, unabsorbed losses and capital allowances (CAs) from previous years, market conditions, etc.

It is not necessary for the Comptroller to specify the sources of income in a notice of assessment. The Comptroller is not required to provide reasons or the basis on which he has raised the assessments where a taxpayer has failed to submit the returns and accounts. Such notices issued by the Comptroller are good in law. The onus is on the taxpayer to prove that the assessment is excessive.

In *ABC v CIT, Singapore* (1950–1985) MSTC 527; (1959) MLJ 163, a notice of assessment which did not indicate any source of income was held to be valid in law. There was nothing to compel the Comptroller to assign a source to the income. To discharge the burden of proof, the taxpayer in the abovementioned case had to show that he did not derive taxable income from any source to the amount stated on the assessment. It was not sufficient for the taxpayer to show that there had been an error in the assessment.

¶17-230 Advance assessments

Section 73 gives powers to the Comptroller to make advance assessments on taxpayers to prevent loss of revenue in the following circumstances:

(a) Where a taxpayer ceases to trade or to carry on a profession or vocation or to be employed. If the assessments are not raised in advance, the taxpayer may not have the funds at a later date to settle his tax liability or it may be difficult to locate the taxpayer.

Example 1

A company makes up its accounts to 31 December each year and permanently ceased trading operations on 31 May 2015. In such a case, the YA 2015 assessment will be based on the accounts to 31 December 2014 and the YA 2016 assessment will be based on the five months to 31 May 2015. The Comptroller will issue the YA 2016 assessment in 2015, usually soon after the cessation of the business.

(b) Where a taxpayer is planning to leave Singapore and his departure will result in his Singapore-sourced income to cease.

(c) Where a non-resident shipowner, charterer or operator of an airline derives Singapore income.

(d) Where, upon cessation of employment, a non-Singapore citizen employee is deemed to have derived gains from the right (ie right that has been granted on or after 1 January 2003 while he was exercising employment in Singapore) to acquire shares in a company and (s 73(2A), see ¶5-260 under *General*):

- where the Comptroller has accepted an undertaking from the individual's employer to report the gains and pay the tax. In such instance, the deemed exercise rule under s 10(7) for gains or profits derived by the individual from the right or benefit to acquire shares would not apply (s 10(7B)), or

- where the employer did not comply with any condition imposed under s 10(7A) by the Comptroller as part of the undertaking. For this purpose, the gains or profits will be deemed to be income accruing to the individual in the year in which the condition is not complied with (s 10(7C)).

(e) Where gains or profits from the right or benefit to acquire shares in the company accrue under s 10(6) to a non-resident director of a company (s 73(2B)).

(f) Where the Comptroller thinks fit, at any time during any year, that an assessment be made in relation to income derived by any person carrying on a trade, business, profession or vocation (s 73(3)). When raising such an assessment, the Comptroller may use the taxpayer's ECI (if such an estimate has been provided in accordance with s 63) or make an assessment according to his best judgement.

Where the Comptroller makes an advance assessment, that assessment is made on the presumption that the existing provisions of the Act will continue to be in force for the YA for which the assessment is made (s 73(4)). Advance assessments may subsequently be amended or additional assessments issued, if the circumstances require.

¶17-240 Time limit for issuing assessments

Where it appears that a person who is liable to tax has not been assessed, or has been assessed at a lesser amount than that which should have been charged, the Comptroller may make an assessment or an additional assessment within the YA or within four years (if the YA is 2008 or thereafter) or within six years (if the YA is 2007 or before) after the expiry of the YA (s 74(1)). This time limit for the Comptroller to raise an additional assessment also applies to any assessment which results in any unabsorbed tax losses or allowances (s 74(4)).

Hence, the time limit for making an assessment or additional assessment is five or seven years, inclusive of the YA itself.

In cases of fraud or wilful default, there is no time limit for the making of an assessment or additional assessment (s 74(2)). The time limits set within the *Limitation Act (Cap 163, 1996 Revised Ed)* will not apply by virtue of s 33(2) of that Act.

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Example 2

If Mr X has been under-assessed for YA 2015 and there is no fraud, the Comptroller has until 31 December 2019 to make an additional assessment in respect of Mr X's income for YA 2015. The expiry of YA 2015 is 31 December 2015. The four-year time limitation period starts on 1 January 2016 and will end on 31 December 2019.

"Protective" assessments

To protect against potential loss of revenue, the Comptroller may issue what are known as "protective assessments" to prevent assessments from becoming time barred. If the Comptroller is of the view that the taxpayer is likely to incur a tax liability for a particular YA and if the Comptroller has not fully investigated the case or ascertained the tax liability, he has to issue a protective assessment on or before 31 December of the last year under the limitation period.

Example 3

An assessment for YA 2006 would become time barred if not issued by 31 December 2012 under the six-year limitation period provided for in s 74. In the case of an assessment for YA 2008, the last day for the issuance of the protective assessment under the four-year limitation is 31 December 2012.

OBJECTION TO ASSESSMENT

¶17-310 Objection procedure

If a taxpayer is dissatisfied with an assessment, the taxpayer may formally object to it within 30 days from the date of service of the notice of assessment (s 76(2) and 76(3)). The Comptroller may extend the 30-day time limit in certain circumstances, eg where the taxpayer is sick or absent from Singapore (s 76(4)).

The taxpayer must provide the Comptroller with the precise grounds on which the objection is based. At the objection stage, a taxpayer does not have to expound his case in full. It is considered sufficient to express as grounds that the amount of assessment is in variance with the return made, is bad in law, or is estimated incorrectly and may prove excessive.

On receiving an objection, the Comptroller will consider it and make a decision whether to allow or disallow the objection. The Comptroller may call for additional information (s 76(5)) which may include books of accounts or documents, or an interview.

Notwithstanding an objection, the tax payable as shown in the assessment must be paid within one month after the service of the notice (s 85(1)). Only in special circumstances (eg "protective" assessments or obvious hardship) will the Comptroller stand over the collection of tax until an agreement is reached.

As mentioned in ¶17-120, the Comptroller can assess a person who is exempted from the liability to deliver a return. Where such an assessment has been raised, that person has to give written notice to the Comptroller within the 30-day time period of any omission or understatement of income, or any excessive or wrongly granted deduction or relief contained in the notice of assessment served on him and to provide the correct information relating to such items (s 76(8)).

Notice of refusal to amend

Where an objection is settled between the Comptroller and the taxpayer, an amended assessment, if applicable, would be issued. Where they fail to reach an agreement, the Comptroller will notify the taxpayer by issuing the "Notice of Refusal to Amend". Only after receiving such a notice can the taxpayer appeal to the Board of Review.

Where a notice of assessment shows a nil tax liability, the Comptroller is not obliged to issue a notice of refusal to amend if he disagrees with the taxpayer's written notice of objection (s 76(6)(b)). In such instance, the taxpayer cannot proceed to the Board of Review if it disagrees with the amount of unabsorbed CAs and/or tax losses. The taxpayer may, however, request for a notice of refusal to amend when, in a subsequent year, the disputed assessment affects the tax liability of that year.

Administrative procedure for corporate taxpayers with effect from 1 January 2014

The Comptroller has implemented the following administrative procedures relating to the objection process for corporate taxpayers, with effect from 1 January 2014:

- The deadline to file a notice of objection has been extended from 30 days to two months from the date of service of the notice of assessment.
- A notice of objection form has been made available for filing an objection.
- Instant acknowledgement of receipt will be issued for a notice of objection filed via e-Objection (*myTax Portal* at mytax.iras.gov.sg) or an acknowledgement of receipt will be issued within 14 days if a notice of objection is filed using the notice of objection form.
- The Comptroller will review the grounds of objection and inform the corporate taxpayer within six months from the date of receipt of the last correspondence provided that all relevant information has been submitted. If a longer period of time is required to review the objection in a complex case, the Comptroller will inform the corporate taxpayer of the estimated time required.
- A corporate taxpayer is required to reply to the Comptroller in writing on whether it accepts the Comptroller's decision within three months from the date of the Comptroller's decision. An objection will be closed if the Comptroller and the corporate taxpayer are in agreement with the tax adjustments and the Comptroller receives a written reply from the corporate taxpayer by the deadline.
- A notice of refusal to amend will be issued when information requested by the Comptroller remains outstanding after two years from the date of receipt of the notice of objection or the corporate taxpayer does not reply to the Comptroller's decision on the item under objection within three months from the date of the Comptroller's letter or the corporate taxpayer's agreement to the Comptroller's decision is qualified.

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¶17-320 Finality of assessment

An assessment becomes final and conclusive when there is no formal objection lodged against it, or where the objection has been allowed or withdrawn (s 84(1)). An assessment is not final and conclusive where an appeal has been lodged against it. Where there is an appeal against the assessment, the assessment becomes final and conclusive only when the appeal is finally determined.

Section 84(2) allows the Comptroller to make an assessment, or an additional assessment, which does not involve reopening any matter which has been determined on appeal. A taxpayer cannot claim that an additional assessment made to correct an error entitles him to reopen matters that have been agreed on or determined in a final and conclusive assessment for the same year (*Re B* (1957) SB XXI).

Similarly, where a matter had been determined on appeal by the Board of Review, the Comptroller has no power to reopen that matter, as held in the Singapore case *CIT v JKL* (1950–1985) MSTC 533; (1961) MLJ 109.

Once an assessment is final and conclusive, it cannot be reopened except under certain circumstances and within the time limits expressly stipulated in the Act. Some of the circumstances are:

- where income has escaped assessments
- where deductions have been wrongly allowed
- where an error or mistake has been committed by the taxpayer, and
- where a mistake has been made by the Comptroller.

COLLECTION, RECOVERY AND REPAYMENT OF TAX

¶17-410 Collection and recovery

The collection machinery commences with the issue of a notice of assessment. The tax assessed must be paid within one month after the service of the notice, notwithstanding the lodgement of an objection (s 85(1)). The Comptroller has the discretion to extend the one-month limit under certain circumstances (eg where the taxpayer is away from the country). In exercising his discretion, the Comptroller may impose such terms and conditions including the payment of interest (s 85(2)). There are also cases where the Comptroller, by invoking s 86, may require immediate payment or payment within seven days of the issue of the notice (eg where a person has a non-resident employer and is likely to leave Singapore at short notice).

In the case of certain payments made to non-residents (eg interest, royalties, management fees, directors' fees, etc), the payer is required to deduct tax from the amount paid (s 45–45H).

The Comptroller has the power to waive a taxpayer's tax liability if the amount of the tax or additional tax assessed is $15 or less (s 75).

Instalment payments

The IRAS allows the current YA tax liability to be paid by instalments under interbank GIRO. An individual taxpayer who opts for this instalment payment scheme can benefit from a maximum of 12 interest-free monthly instalments from May to April of the following year.

For a Singapore-registered company, GIRO instalments are allowed on a contracting basis. The number of instalments depends on when and how the ECI is furnished to the IRAS. From YA 2008, to qualify for the maximum number of instalments, the ECI has to be filed immediately after the accounting year-end as given in the following table extracted from the IRAS website:

ECI filed within X months from accounting year-end	No of instalments granted	
	e-file via myTax Portal[a]	Paper-filed[b]
1 month	10	5
2 months	8	4
3 months	6	3
After 3 months	No instalments allowed	

Footnote:

a E-filers must e-file by the 26th of the month after the accounting year-end to enjoy the maximum number of instalments allowable for that month. (For example, a December year-end company will enjoy 10 instalments if it e-files by 26 January.)

b Paper-filers must submit the ECI Form (with an instalment plan) by the 24th of the month after the accounting year-end to enjoy the maximum number of instalments allowable for that month. (For example, a December year-end company will enjoy five instalments if it paper-files its ECI by 24 January.)

Collection through appointed agent

In certain cases, particularly where non-resident taxpayers are involved, the Comptroller may appoint a person as an agent of the taxpayer for the purpose of facilitating the collection of tax (s 57(1)). An agent appointed under s 57 is only required to settle the taxpayer's tax liability from moneys which are held by the agent or due by the agent to the taxpayer. The agent has to make payment within 90 days after receiving the notice from the Comptroller.

Tax clearance

An employer must retain any money (including overtime pay, leave pay, transport and entertainment allowances, etc) which is due to a non-Singapore citizen employee who ceases or is about to cease employment. The employer must complete Form IR21 (stating the amount of money withheld) and he can only release the money when the Comptroller gives the tax clearance or upon the expiry of 30 days after the receipt by the Comptroller of Form IR21 (s 68(7)).

An employer who fails to withhold money pending tax clearance will be liable to pay the full amount of tax that cannot be recovered as a result of that failure (s 91(8)).

According to the IRAS, tax clearance is not required for any non-citizen employee:

- who works in Singapore for periods not exceeding a total of 60 days in a calendar year. However, tax clearance is required for a director, public entertainer or individual exercising a profession, vocation or other similar employment, and also for any employee whose employer has knowledge that he has worked in Singapore before taking up employment with the employer

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- who works in Singapore for 183 days or more in a calendar year but earns a total income of less than $20,000 per year. Note that tax clearance is required if the employer knows that such an employee has worked in Singapore before taking up employment with him in the calendar year and the total income of the employee for that year likely exceeds $20,000
- who works in Singapore for three consecutive years but whose total income is less than $20,000 in each calendar year, or

Example 4

Mr Edwards, a British citizen without Singapore permanent resident status, derived income of $5,500, $18,000 and $19,000 from his work in Singapore for the years 2013, 2014 and 2015 respectively. Tax clearance was not required when Mr Edwards returned to London on 12 June 2015.

- who is re-deployed or transferred to work for another employer in Singapore owing to the re-structuring, re-engineering, merger or takeover of his previous Singapore employer (tax clearance, however, is required where such an employee ceases employment with the former employer and leaves Singapore before returning to seek re-employment with the new Singapore employer).

Tax clearance is also not required for a resigning employee who is a Singapore permanent resident unless the employee is leaving Singapore permanently.

Stand-over orders

Although tax is payable within one month after the service of a notice of assessment, the Comptroller may direct that the tax be stood over if he considers it to be reasonable and just. The Comptroller will, accordingly, instruct the Enforcement Division not to proceed with collection. The following are some circumstances in which tax is stood over:

- where severe financial embarrassment will result for the taxpayer if tax collection is enforced
- where the extent of the bankruptcy is not known in cases of bankruptcy
- where the taxpayer shows signs of cooperation with the IRAS in cases of tax evasion, and
- where correspondence is in progress between the taxpayer and the IRAS on an important tax issue and the extent of the liability is not clearly determinable.

¶17-420 Late payment penalty

If the tax charged in an assessment is not settled within one month after the service of the notice of assessment, or within such time allowed by the Comptroller under s 85(2), a penalty of 5% is added to the tax payable (s 87). A demand note (Form IR 17) is then issued. The outstanding tax (including interest imposed at the discretion of the Comptroller under s 85(2), if any) and the penalty must be settled within one month of its issue.

An additional penalty of 1% for each completed month on the amount of tax outstanding is payable if the tax remains unpaid 60 days after the issue of Form IR 17. The maximum additional penalty imposed cannot exceed 12%.

If the full tax is not settled after the expiry of 15 months from the date of issue of the notice of assessment, the Comptroller will proceed to enforce payment through legal proceedings for the outstanding amount including interest and penalty (s 89).

¶17-430 Repayment of tax

Section 93(1) provides that where tax has been paid, by deduction or otherwise, in excess of the amount payable, the excess is refundable. Various circumstances can give rise to overpayments, eg where:

- tax has been paid on an assessment that has subsequently been reduced
- tax has been paid by deduction at a rate higher than the rate at which the taxpayer is assessable
- tax has been paid on income that is specifically exempt (eg exempt interest)
- relief due has not been taken into account (eg double taxation relief, personal relief), and
- an error or mistake has been made in an assessment.

A claim for repayment must be made within four or six years after the YA to which the claim for repayment relates as follows (s 93(2)):

- four years for a claim relating to YA 2008 or subsequent YAs, or
- six years for a claim relating to YA 2007 or earlier YAs.

Example 5

Assume that the assessment for YA 2007 was made on Tina on 15 July 2007. The tax was paid in August 2007. If a repayment of tax arises from any one of the circumstances stated earlier, a claim must be made by 31 December 2013.

In the case of an assessment for YA 2010, a claim for repayment of tax overpaid must be made by 31 December 2014.

Where the Comptroller has given notice of his intention to appeal against a Board of Review's decision, he can withhold the tax overpaid until his appeal is finally determined. In such instance, the Comptroller has to pay interest at 5% per annum to the taxpayer from the date of the appeal (s 93(8)).

¶17-440 Error and mistake relief

Section 93A gives a taxpayer the right to claim relief in respect of any error or mistake made in his tax computation. An error may be one of omission or commission. This would include an error of not claiming a deductible expense or of reporting a non-taxable receipt. The word "mistake" is to be interpreted as a slip. It must be made by mischance and not by design. It could be the result of forgetfulness.

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In the High Court case *AQP v CIT [2011]* SGHC 229, the decision of the Board of Review that an "error or mistake" under s 93A(1) is not confined merely to "ignorance or inadvertence" and should be wide enough to cover genuine mistakes of law was upheld. However, the application of s 93A(3), which provides that no relief shall be given if the Comptroller was, at the material time, also operating under the same error or mistake, was not canvassed. The interpretation and application of s 93A was not raised on appeal of the decision of the High Court to the Court of Appeal, *AQP v CIT [2013]* SGCA 3.

A person who is exempted from the liability to deliver a return can also claim relief under s 93A in respect of any excessive assessment caused by an error or a mistake in the notice of assessment served on him (s 93A(1)).

Time limit for claim

A time limit for claiming relief is provided under s 93A(1) and the relevant words are "at any time not later than four or six years after the end of the year of assessment within which the assessment was made" as follows:

- four years for a claim relating to YA 2008 or subsequent YAs, or
- six years for a claim relating to YA 2007 or earlier YAs.

An important consideration under s 93A is the year in which the IRAS issued the notice of original assessment.

Example 6

(a) A return of income was made for YA 2009 and the IRAS issued a notice of assessment for that year in 2009. The taxpayer has the right to claim relief under this section at any time up to 31 December 2013. If the notice of assessment for YA 2009 was made in 2010, the last day for a claim for repayment would be 31 December 2014 (ie there is a four-year time limit).

(b) A tax return for YA 2005 was filed in 2008. The IRAS subsequently issued an assessment for YA 2005 in 2008. A claim for "error or mistake" relief can be made at any time up to 31 December 2014 (ie there is a six-year time limit).

(c) The IRAS issued a notice of assessment for YA 2004 in 2004. In 2008, a notice of additional assessment for YA 2004 was issued. Since the additional assessment relates to an original assessment raised in YA 2004, the "error or mistake" claim relating to the additional assessment must be made by reference to the date of issue of the original assessment and the time limit would expire on 31 December 2010.

Circumstances of adjustment

The Comptroller will consider various factors in deciding whether to accept a claim under s 93A. These include:

- whether a return of income has been submitted
- whether a statement or account supporting the return has been submitted
- whether the return or statement was correct in law

- whether the taxpayer has accepted and agreed with the assessment raised by the Comptroller, and
- whether, based on the facts then available and relevant to the circumstances, the assessment raised by the Comptroller is just and reasonable.

Error and mistake relief will not apply if a return or statement was computed on the basis of, or in accordance with, the prevailing practice of the Comptroller at the time the return or statement was made (s 93A(3)). Where a deduction was not claimed in a previous YA in accordance with common practice and such practice is subsequently shown by a court decision to be wrong in law, a claim under the "error and mistake" provision will not be admitted. Similarly, if a taxpayer had claimed CAs under s 19A (accelerated rates) in previous years and subsequently wishes to withdraw such claim and claim s 19 (normal rates), the s 93A relief will not apply. This is because there was no "error or mistake" made by the taxpayer when he chose a s 19A over a s 19 claim. However, where a taxpayer had made a genuine mistake or error in his return (eg the taxpayer had failed to claim an admissible business or non-business deduction to which he was entitled to in law), the taxpayer can apply under s 93A for the repayment of tax overpaid.

ADVANCE RULING SYSTEM

¶17-460 Advance rulings

The advance ruling system came into effect on 1 January 2006. The relevant legislation is s 108 and the Seventh Schedule. Details of the system can be found in the IRAS e-Tax Guide "Advance Ruling System (3rd Ed)", published on 23 December 2013.

A person can apply to the Comptroller for a written ruling on how a provision of the Act applies or would apply to that person and to the arrangement for which the ruling is sought. The ruling is private and confidential to the applicant, and would not be released by the Comptroller to the public.

An advance ruling is a written interpretation of the application of certain provision(s) of the Act on a proposed arrangement. The ruling will state the period or YA for which the ruling will apply, the material assumptions about future events or other matters made by the Comptroller, and any other conditions stipulated by the Comptroller.

An advance ruling is legally binding and will apply in relation to the arrangement for the period of time specified in the ruling. The Comptroller is obliged to apply those statutory provisions in the manner set out in the ruling. Similarly, the person who has obtained a ruling from the Comptroller is required to apply the ruling on the said arrangement when preparing his return. Should there be any material changes to the said arrangement, such changes have to be stated on the return.

Note that an issued ruling is final and cannot be subject to an appeal process. There is no appeal process provided in the Act. Therefore, if the person disagrees with the ruling, the person need not rely on the ruling and can prepare his return according to his own basis. However, when preparing the return, the person has to state on the

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return the fact that he has not relied on the ruling. When the Comptroller subsequently issues the tax assessment based on the ruling disagreed by the person, the person can then lodge an appeal against the assessment.

A ruling will not apply to a person in relation to an arrangement if:

(a) the arrangement is materially different from the arrangement identified in the ruling

(b) there was a material omission or misrepresentation in, or in connection with, the application for the ruling

(c) the assumption made by the Comptroller about a future event or another matter that is material to the ruling subsequently proves to be incorrect, or

(d) the Comptroller stipulates a condition that is not satisfied.

Withdrawal of ruling

Once a ruling has been given by the Comptroller, he may at any time withdraw a ruling by notifying the applicant in writing and giving the reasons for the withdrawal. Note that the Comptroller does not have to withdraw and reissue a new ruling to correct a typographical or a minor error if the correction does not change the meaning of the ruling. A ruling that is not withdrawn and reissued remains valid.

Fees payable

The fees payable in respect of an application for a ruling are as follows:

(a) a non-refundable application fee of $562 (inclusive of GST)

(b) a further fee, calculated at $140.50 (inclusive of GST) per hour (or part hour), beyond the first four hours, spent in consideration of the application by the Comptroller, including any time spent by the Comptroller in consulting with the applicant

(c) an additional fee, up to twice the total fee under (a) and (b), for the Comptroller to give priority to the application and to expedite his consideration of it

(d) reimbursement of fees payable to external professional advisers where it has been agreed that external professional advice is required for the ruling, and

(e) reimbursement of any costs and disbursements incurred by the Comptroller.

The Comptroller is required to ensure as far as is reasonably practicable that every effort is made to minimise the fees to which an applicant is liable in respect of an application for a ruling.

Application for a ruling

An application for a ruling does not affect a person's obligation to provide any return, make any payment or do any other act. Similarly, the Comptroller's power to make or amend any assessment would not be affected by an application for a ruling.

An application for an advance ruling must be made on the prescribed form giving the following details:

(a) particulars of the applicant

(b) all relevant facts (including the reasons for the arrangement, if applicable) and documents relating to the arrangement in respect of which the ruling is sought

(c) the provisions of the Act in respect of which the ruling is sought

(d) the proposition of law (if any) which is relevant to the issues raised in the application

(e) the result of a previous application made on the same or any similar arrangement by the applicant, if any, and

(f) a draft ruling.

The Comptroller may waive any of the requirements (c) to (f) above if he considers that it would be unreasonable to require the applicant to comply with any of those requirements.

The time frame to apply for an advanced ruling has been clarified in the IRAS e-Tax Guide "Advanced Ruling System (3rd Ed)", published on 23 December 2013:

- not later than two months before the date of the proposed arrangement, or
- not later than one month before the date of the proposed arrangement for an express ruling.

An application for an advanced ruling should be addressed to the following person for arrangements concerning:

- individual income tax matters — Assistant Comptroller (Individual Income Tax Division), and
- corporate income tax matters — Assistant Comptroller (Corporate Tax Division).

Request for further information

The Comptroller may at any time request further relevant information from an applicant for a ruling. If the Comptroller considers that the correctness of a ruling would depend on assumptions being made about a future event or other matter, he may make the assumptions he considers to be most appropriate, but he may not make assumptions about information which the applicant can provide.

Withdrawal of application

Before a ruling is issued by the Comptroller, an applicant for a ruling may at any time withdraw the application by giving written notice to the Comptroller.

The Comptroller will not make a ruling on a provision of the Act that authorises or requires the Comptroller to:

(a) impose or remit a penalty

(b) inquire into the correctness of any return or other information supplied by any person

(c) prosecute any person, or

(d) recover any debt owing by any person.

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The Comptroller will also not make a ruling if:

(a) at the time the application is made or at any time before the ruling is issued, the Comptroller considers that the person to whom the ruling is to apply is not seriously contemplating the arrangement for which the ruling is sought

(b) the application is frivolous or vexatious

(c) the matter on which the ruling is sought:

  (i) concerns tax (excluding estimated tax) that is due and payable, unless the application is received before the tax is due and payable

  (ii) involves the interpretation of any foreign law, or

  (iii) is being dealt with, or in the Comptroller's opinion should be dealt with, by one or both competent authorities of the parties to an agreement to avoid double taxation

(d) a ruling already exists on how the relevant provision of the Act applies to the person and the arrangement, and the proposed ruling would apply to a period or a YA to which the existing ruling applies

(e) an assessment (other than an assessment of any estimated tax) relating to the person, the arrangement, and a YA to which the proposed ruling would apply has been made, unless the application is received by the Comptroller before the date the assessment is made

(f) the Comptroller is undertaking an audit or investigation on how any provision of the Act applies to the applicant, or to an arrangement similar to the arrangement which is the subject of the application, during any period for which the proposed ruling would apply were the ruling to be made

(g) the applicant, in the Comptroller's opinion, has not provided sufficient information in relation to the application after the Comptroller has requested further information

(h) it would be unreasonable, in the Comptroller's opinion, to make a ruling in view of the resources available to the Comptroller, or

(i) the application for the ruling would require the Comptroller to form an opinion as to a generally accepted accounting principle or to form an opinion as to a commercially acceptable practice.

The Comptroller may decline to make a ruling if:

(a) the application for the ruling would require the Comptroller to determine any question of fact

(b) the Comptroller considers that the correctness of the ruling would depend on the making of assumptions, whether in respect of a future event or any other matter

(c) the matter on which the ruling is sought is subject to an objection or appeal, whether in relation to the applicant or any other person

(d) the applicant has outstanding debts relating to earlier ruling applications, or

(e) the matter on which the ruling is sought is the subject of a return which has been or is due to be lodged under the Act.

APPEALS

¶17-510 Board of Review

On receipt of a "Notice of Refusal to Amend", a taxpayer has the right to appeal to the Board of Review (s 79). The notice of appeal must be lodged with the secretary to the Board of Review within 30 days after the issue of the notice of refusal to amend. This is to be followed within 30 days by a petition of appeal stating the grounds of appeal.

The Board of Review is constituted under s 78. The Board members are appointed by the Minister for Finance and the Board cannot have more than 30 individuals. The quorum for an appeal must not be less than three members, one of whom will be the chairman. A deputy chairman may preside at the Board meetings in the absence of the chairman, and a Board member may preside at the meetings in the absence of the chairman or any deputy chairman (s 78(7)). The taxpayer can be represented by an advocate and solicitor, or an accountant.

Both the taxpayer and the Comptroller cannot object to the appointment of the chairman or deputy chairman. The taxpayer can object up to a third of the Board members from hearing the appeal (s 79(3)). The number of the Board members objected to by the Comptroller plus the number objected to by the taxpayer cannot exceed one-half of the total number of members of the Board (s 79(5)). The chairman (or the deputy chairman as authorised) will make a decision (which is final) whether the reason for any objection to any member is valid. If the reason is valid, the member shall not attend the hearing; if it is not valid, the objection shall be rejected and the appellant or the Comptroller informed accordingly (s 79(6) to 79(10)).

At the conclusion of a hearing, the Board may confirm, reduce, increase or annul the assessment under appeal or make such order thereon as it thinks fit (s 80(10)). It acts by a majority decision which may be delivered orally or given in writing. The Board does not have the powers to go into matters not raised by the appeal.

Onus on taxpayer to show assessment excessive

The onus is on the taxpayer to show that an assessment is excessive, notwithstanding the fact that the assessment could be based on an estimate made by the Comptroller (s 80(4)). Thus, if the taxpayer does not provide any accounts or satisfactory accounts at a hearing, the Board would be entitled to confirm the assessment in question (see *SRRL*'s case (1954) SB XII; *AD*'s case (1963) FB XXV). Where, however, proper accounts are produced in evidence, it is considered that the Board would have to give some valid reasons for not accepting them.

In *SRRL*'s case, the Board of Review accepted the Comptroller's contention that the taxpayer had failed to discharge the onus of proving that the assessments raised on him were excessive. The taxpayer had submitted returns for 1952 and 1953, showing an income of $6,833 and $4,388 respectively. He had reported losses in the three previous years. During these years, he had purchased cars, spent $2,500 on a trip to India and acquired property worth $14,500. The Comptroller refused to accept the returns and issued assessments in the sums of $17,500 and $27,000 for the years 1952

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and 1953 respectively. The taxpayer conceded under cross-examination that his books of accounts had not been properly maintained and had been compiled from incomplete records and from memory.

In *CIT v Gian Singh & Co Pty Ltd* (1972) 2 MLJ 234, the Court of Appeal held that, in order for a taxpayer to discharge the onus on him of proving that an estimated assessment is excessive, it is not enough to show that the Comptroller has ignored certain sources. There is a further onus to show in what way it is excessive and by what amount it is excessive.

However, the onus of proving a sham is on the Comptroller should he try to rebut the taxpayer's contention that the tax was excessive. When sources of income have been particularised by the Comptroller, he is not at liberty to require a taxpayer to establish exactly that his income was from all sources (*CEC v CIT* (1950–1985) MSTC 551; (1971) 2 MLJ 43).

¶17-520 High Court

The decision of the Board of Review is final where no question of law is involved. The taxpayer or the Comptroller may appeal to the High Court against the Board's decision only if the issue concerns a question of law or a question of mixed law and fact, and the disputed tax exceeds $200 (s 81).

The Board of Review may refer a case to the High Court for its opinion on a question of law. The High Court after hearing and determining the question of law arising on the stated case will confirm, increase, reduce or annul any assessment determined by the Board of Review (s 82).

¶17-530 Court of Appeal

The taxpayer or the Comptroller can appeal to the Court of Appeal against a decision of the High Court. There is no right of appeal against the decision of the High Court on a question of fact.

OFFENCES AND PENALTIES

¶17-600 Offences and penalties

If a taxpayer infringes any tax law, the taxpayer will have committed an offence for which he may become liable to a penalty, a fine or, in some cases, to imprisonment.

¶17-610 Offences

Some common offences committed by taxpayers are the failure to:

- submit an income tax return (s 62)
- submit an income tax return but income which should be included is left out or a false entry is made in a return or there is negligence or fraud (s 62)
- attend personally before the Comptroller and to produce any books, documents, returns, etc, for examination (s 65)

- give statements of all bank accounts, etc (s 65A)
- provide information of their own or any other person's income, assets and liabilities (s 65B)
- maintain records and receipts as required (s 67)
- give details of income received on behalf of another person (s 69)
- provide details of names, addresses and remuneration of employees (s 68(2))
- notify the Comptroller of an employee's engagement or cessation of employment (s 68(4) and 68(5))
- inform the Comptroller that employees are going to leave Singapore for more than three months (s 68(6)), and
- inform the Comptroller of a change of address (s 88).

It is also an offence to:

- give false answers whether orally or in writing (s 96(1)(c))
- falsify or authorise the falsification of books of accounts and other records (s 96A(1)(a); *FSTS v Public Prosecutor* (1990) 1 MSTC 7,089)
- use or authorise the use of any fraud or contrivance (s 96A(1)(b))
- voluntarily leave or attempt to leave Singapore without settling all outstanding taxes, penalties, etc (s 86(5))
- obstruct or refuse to allow the Comptroller full and free access to any building or place, refuse to produce books and documents or to answer any questions lawfully asked, or fail to give reasonable assistance (s 98), and
- aid, abet or incite a person to commit an offence under the Act.

It is an offence for an officer of the IRAS in the course of carrying out his official duties under the Act to (s 97):

- demand monies in excess of authorised amount
- retain tax collected for his own use
- make a false return, verbally or in writing, of the amount of tax collected
- commit any kind of fraud or embezzlement, and
- collect or attempt to collect tax when he is not authorised to do so.

¶17-620 Penalties

The Act provides for varying penalties, fines and periods of imprisonment for different offences committed by taxpayers. The nature and degree of penalty that a person could be liable to vary with the severity of the offence committed. Below is a summary of the main categories of offences and their related penalties.

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Nature of offence	Penalties	Section
General offences	• Fine $1,000 (maximum) and, in default of payment, imprisonment for up to 6 months	94
Failure to give notice of chargeability, to file return and/or to furnish information as requested by the Comptroller	• Fine $1,000 (maximum) and, in default of payment, imprisonment for up to 6 months	94A
	• Penalty of $50 for each day the offence continues upon conviction	94A(2)
On conviction on or after 1 January 2008 for above failure in respect of 2 or more YAs. Prior to 1 January 2008, the minimum period was 3 YAs for the penalty to apply.	• Penalty of 200% of tax and fine not exceeding $1,000 and, in default of payment, imprisonment for up to 6 months	94A(3)
Incorrect return	• Penalty of 100% of tax undercharged	95(1)
Incorrect return *without reasonable excuse* or *through negligence*	• Penalty of 200% of tax undercharged • Fine $5,000 (maximum), and/or • Imprisonment for up to 3 years	95(2)
Tax evasion	• Penalty of 300% of tax undercharged • Fine $10,000 (maximum), and/or • Imprisonment for up to 3 years	96
Serious fraudulent tax evasion	• Penalty of 400% of tax undercharged • Fine $50,000 (maximum), and/or • Imprisonment for up to 5 years	96A
Offence by authorised and unauthorised persons	• Fine $10,000 (maximum), and/or • Imprisonment for up to 3 years	97
Obstructing IRAS officers	• Fine $1,000 (maximum) and, in default of payment, imprisonment for up to 6 months	98

The issue of whether the Court has the discretion not to impose a fine and/or imprisonment in addition to the mandatory penalty imposed was addressed in the case of *CGH v Public Prosecutor* (2000) MSTC 7,387. The case involved the interpretation of the former s 96(1) and 96(2). Chief Justice *Yong* at 7,405 held the view that the phrase "shall be liable" used in the Act for prescribing fines or imprisonment was in the mandatory sense.

Any interest imposed for late payment under s 85(2) or penalty does not form part of the tax paid for purposes of claiming relief under the Act (s 100).

¶17-700 Summary of administrative requirements for selected returns and notices

(a) Annual filing by taxpayer

	Nature of return		*When required to be made*	*Person liable to make return*	*Due date for filing*
Return of income: s 62(1)	Return of income of:		Annually on receipt of relevant forms from Comptroller		
	Individual				
	Resident —	Form B/B1		Relevant individual	15 April
	Non-resident —	Form M		Relevant individual	15 April
	Partnership —	Form P		Precedent partner (s 71)	15 April
	Club —	Form P1		Manager or principal officer	15 April
	Management Corp or Town Council —	Form P1		Management corporation or Town Council	15 April
	Pension or Provident fund —	Form P1		Trustee of fund	15 April
	Trust or Estate —	Form T		Trustee, executor or administrator	15 April
	Company —	Form C		Relevant company	30 November

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	Nature of return	When required to be made	Person liable to make return	Due date for filing
Chargeability to tax: s 62(4)	Notice of chargeability	When no return from the Comptroller is received but person is chargeable to tax	Every person chargeable to tax, if no return is received	14 days after the end of the first 3 months of the YA, ie by 14 April
Chargeable income: s 63	Estimate of chargeable income	When a return has not been made for a YA	From YA 2009, individuals carrying on a trade, business, profession or vocation; partnerships and any other persons	Within 3 months after the end of the relevant accounting period

(b) Filing by employer/partnership

	Nature of return	When required to be made	Person liable to make return	Due date for filing
Employer's returns: s 68(2)	Names and addresses of employees and their full remuneration — Forms IR8A, IR8S, Appendix 8A, 8B	Annually	Employer	Returns to be handed to relevant employees no later than 1 March
Cessation of employment: s 68(5)	Name and address of employee and date of ceasing employment — Form IR21	When a non-citizen employee who is likely to be chargeable to tax ceases employment (excluding a Singapore permanent resident changing job but not leaving the country)	Employer	Not less than 1 month before the employee ceases employment

Chapter 17

	Nature of return	When required to be made	Person liable to make return	Due date for filing
Cessation of partner: s 68(8)	Name and address of partner and date of cessation	When a person who is likely to be chargeable to tax ceases to be a partner	Partners present in Singapore	Not less than 1 month before person ceases to be a partner
Departure from Singapore: s 68(6), 68(6A), 68(9) and 68(10)	Name and address of employee or partner leaving or intending to leave Singapore	When employee or partner who is likely to be chargeable to tax leaves or intends to leave Singapore for a period exceeding 3 months (except Singapore citizen or where employment/ partnership requires frequent travel)	Employer/ partners present in Singapore	Not less than 1 month before leaving

(c) Upon request from the Comptroller

	Nature of return	When required to be made	Person liable to make return	Due date for filing
Bank accounts, assets: s 65A	Particulars of bank accounts, assets, sources of income, etc	When required by notice from Comptroller	Person to whom notice given	As required by notice
Occupiers of land or premises: s 70	Particulars of names and addresses of persons to whom rent or any other consideration is payable on property	When property is occupied by a person, if required by notice from Comptroller	Occupier of property to whom notice is given	As required by notice
Agents and representatives: s 69	Particulars of income and names and addresses of persons on whose behalf income is received	When a person receives money or value being income of another chargeable person, if required by notice from Comptroller	Person who receives money or value, to whom notice is given	As required by notice

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(d) Onus on taxpayer to inform

When	*Nature of return*	*When required to be made*	*Person liable to make return*	*Due date for filing*
Arrival in Singapore: s 62(5)	Notice of arrival	When arriving in Singapore	All new arrivals	Within 1 month of arrival
Change of address: s 88	Taxpayer's change of address	When a person is liable to pay income tax changes his address. Notice not required if person uses residential address and change is reported under the *National Registration Act (Cap 201)*	Person whose address has changed	Upon change of address

Chapter 17

CHAPTER 18

INCENTIVES UNDER THE INCOME TAX ACT

OVERVIEW

¶18-110 Types of incentives and eligible taxpayers

This chapter deals with some of the incentives contained in the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act") and its subsidiary legislation. The incentives given to the selected group of taxpayers are either exemption from income tax or taxation at a reduced concessionary tax rate of usually 10% or 5%.

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The following table gives the relevant sections of the Act for the different tax incentives subject to concessionary tax rate(s) as well as the corresponding Regulations:

Section	Tax incentive	Regulations*
43A	Asian Currency Unit, fund manager and securities company	4, S 183/2003, S 735/2005
43B	Non-resident shipowner or charterer or air transport undertaking	—
43C	Insurance and reinsurance business	25, 26, 27, 28
43D	Singapore Exchange or its subsidiaries	16, S 639/2003
43E	Headquarters company	6
43F	Oil trading company	15
43G	Finance and Treasury Centre	18
43H	International commodity trading	14
43I	Offshore leasing of machinery and plant	S 566/2008
43J	Trustee company	21
43K	Commodity future exchanges	S 316/2009
43N	Income derived from debt securities	32
43O	Cyber trading	33
43P	Global trading company	S 204/2003
43Q	Financial sector incentive company	S 735/2005
43R	Provision of processing services to financial institutions	S 348/2005
43S	Commodity derivatives trading company	S 672/2005
43T	Securities lending or repurchase company	S 259/2006
43U	Event company	—
43V	Clearing member of Singapore clearing house	S 96/2007
43W	Shipping investment manager	S 696/2010
43X	Singapore resident beneficiary of a trust	—
43Y	Aircraft leasing company	S 566/2008
43Z	Aircraft investment manager	S 565/2008
43ZA	Container investment enterprise	—
43ZB	Container investment manager	S 697/2010
43ZC	Approved insurance brokers	S 136/2009
43ZD	Income derived from managing qualifying registered business trust or company	S 155/2009
43ZE	Ship broker and forward freight agreement trader	—
43ZF	Shipping-related support services	S 4/2012

* Regulations refer to the legislation number assigned to the Regulations, eg Income Tax (Concessionary Rate of Tax or Exemption for Income Derived from Debt Securities) Regulations is Regulation (Rg) 32. Where there is no regulation number assigned, the gazette number is shown, eg S 637/2003.

Chapter 18

2015 Budget announcement

(a) Withdrawal of concessionary tax rate on income derived from offshore leasing of machinery and plant

The concessionary tax rate on income derived from offshore leasing of machinery and plant under s 43I will be drawn from 1 January 2016. Any income derived from 1 January 2016 by a leasing company from the offshore leasing of any machinery and plant will be subject to tax at the prevailing corporate tax rate.

(b) Introduction of a new incentive to promote internationalisation efforts

A new incentive, the International Growth Scheme (IGS), will be introduced to provide greater and more focused support for larger Singapore companies in their internationalisation efforts. The aim of the incentive is to support high potential Singapore companies who anchor their key functions in Singapore to grow in their internationalisation activities.

Under the proposed IGS, qualifying Singapore companies will enjoy a concessionary tax rate of 10% on their incremental income from qualifying activities for a period not exceeding five years. The approval period for this new incentive will be from 1 April 2015 to 31 March 2020. This new incentive will be administered by IE Singapore.

IE Singapore will release further details by May 2015.

¶18-120 Ascertaining exempt or concessionary income

The abovementioned sections of the Act or the Regulations provide the details for determining the exempt or concessionary income for each incentive.

For most incentives mentioned in this chapter, the following items allowable under the Act must be deducted in ascertaining the exempt income or income chargeable to tax at the concessionary rate (ie concessionary income):

- expenses incurred in the production of the exempt income or concessionary income
- capital allowances, and
- approved donations.

Furthermore, any losses arising from the qualifying activities must be deducted in accordance with the Act or the relevant Regulations. In all cases, the deduction of the capital allowances, losses and donations brought forward from prior years of assessment (YAs) against the company's assessable income would be subject to the shareholders' continuity test under s 37 (see Chapter 9 at ¶9-400).

In certain situations, eg where a financial institution or an approved securities company suffers any loss arising from syndicated offshore credit or underwriting facilities or syndicated guarantee facility, that loss can be set off only against future exempt income from that source.

¶18-130 Exempt dividends

With the one-tier corporate tax system fully in place on 1 January 2008, all dividend payments on or after 1 January 2008 are tax exempt in the hands of the shareholders. There is no requirement to distinguish between dividends paid out of taxable income and dividends paid out of income exempt from tax or income subject to concessionary tax rates.

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FINANCIAL SERVICE SECTOR

¶18-160 Overview

To streamline the various tax incentives for the financial service industry, an umbrella Financial Sector Incentive (FSI) scheme was introduced to merge these incentives. The objective of this scheme is to encourage the development of high-growth and high value-added financial activities in Singapore. The FSI scheme came into effect on 1 January 2004 and is regulated by the Monetary Authority of Singapore (MAS). The FSI scheme, which would have expired on 31 December 2013 (except FSI-IF), has been extended for another five years to 31 December 2018 as announced in the 2013 Budget. The FSI-IF award expired on 31 March 2013 and was not extended. The existing qualifying Islamic financing activities will be incentivised under the FSI-Standard Tier (FSI-ST) award.

The following seven tax incentive schemes were merged into the FSI scheme with effect from 1 January 2004:

(a) Approved Bond Intermediaries (ABI) (¶18-210)

(b) Asian Currency Units (ACUs) (¶18-250)

(c) Approved Derivative Traders (ADT) (¶18-330)

(d) Approved Fund Managers (AFM) (¶18-350)

(e) Equity Capital Market Intermediaries (ECMI) (¶18-400)

(f) Operational Headquarters (OHQ) (¶18-500), and

(g) Syndicated Offshore Credit and Underwriting Facilities (Syndicated Facilities) (¶18-450).

Companies that were previously awarded any of the above incentives were automatically moved to the FSI scheme on 1 January 2004 and will continue to enjoy the respective tax incentives up to the expiry of their existing awards.

Chapter 18

Tax treatment of income from qualifying activities

Under the FSI scheme, there are two types of FSI qualifying activities and the income derived from these categorised activities is subject to concessionary tax rates of 5% or 10% as follows (s 43Q(1)):

- *Enhanced-tier (ET) qualifying activities and awards*

  All income derived from ET activities is taxed at the concessionary tax rate of 5% and is not subject to any qualifying base (QB) (see below). The initial tenure is expected to be five years and may be granted up to 10 years depending on the scope of activities of the company.

- *Standard-tier (ST) qualifying activities and awards*

  Income derived from ST activities from 1 January 2004 in excess of the QB amount is taxed at the concessionary tax rate of 10%. The QB amount is taxed at the normal corporate tax rate of 17% (with effect from YA 2010).

  When a company transits into or applies for its first FSI award, it has to compute an initial QB, which will be the predetermined percentage to be applied to income from ST activities. The resulting QB amount will not qualify for the 10% tax rate but will be taxed at the normal corporate tax rate. The QB is based on the income from three YAs prior to the commencement of the FSI activities.

The following companies that have been granted the FSI awards are not subject to the QB, ie all their income from the qualifying activities is taxed at 10%:

- companies with the FSI-HQ Services award, and
- companies engaged solely in fund management or investment advisory services.

The qualifying FSI activities and criteria given in the MAS Circular FDD Cir 05/2003 (*Details of Financial Sector Incentive (FSI) Scheme*) dated 1 April 2003 are reproduced in the paragraphs below. See the Income Tax (Concessionary Rate of Tax for Financial Sector Incentive Companies) Regulations 2005 for the prescribed qualifying activities and deduction of losses.

Removal of qualifying base

With effect from 1 January 2011, the QB has been removed and the concessionary tax rate of 10% under the FSI-ST award has been changed in tandem to 12%. The list of qualifying activities has also been updated. These changes were introduced to simplify the rules of the FSI scheme and lower compliance costs for the financial institutions.

Further enhancement to the liberalisation of the withholding tax (WHT) exemption regime for banks

Approved banks gazetted under the Act enjoy WHT exemption on interest and other qualifying payments made to their branches or other banks outside Singapore under a remission for inter-bank/inter-branch payments granted under s 92(2). Banks also enjoy various WHT class exemptions on certain payments made to non-bank non-residents relating to specific transactions (eg payments relating to over-the-counter (OTC) financial derivatives, structured products, securities lending, etc).

To facilitate access to a wider range of funding sources for their lending business and strengthen Singapore's position as a regional funding centre, the following enhancements came into effect on 1 April 2011:

(a) The WHT exemption is granted on interest and other qualifying payments falling within the ambit of s 12(6) made to all non-resident persons (excluding permanent establishments (PEs) in Singapore) if the payments are made for the purpose of their trade or business, and

(b) The WHT exemption is extended to:

- banks licensed under the *Banking Act (Cap 19, 2008 Revised Ed)* or approved under the *Monetary Authority of Singapore Act (Cap 186, 1999 Revised Ed)*
- finance companies licensed under the *Finance Companies Act (Cap 108, 2011 Revised Ed)*, and
- approved financial institutions licensed under the *Securities and Futures Act (Cap 289, 2006 Revised Ed)* that engage in lending as part of their regulated activities of dealing in securities in Singapore (such as investment banks).

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The WHT exemption covered by the enhancements also applies to:

(a) payments liable to be made during the period from 1 April 2011 to 31 March 2021 on contracts which take effect before 1 April 2011, and
(b) payments liable to be made on contracts which take effect on or after 1 April 2011 to 31 March 2021.

A sunset clause with a deadline of 31 March 2021 applies for the enhanced scope of the WHT exemption.

Specified entities are also not required to withhold tax on interest and other payments made to PEs in Singapore. The enhancement takes effect for:

(a) payments to be made from 17 February 2012 to 31 March 2021 for contracts already in force before 17 February 2012, and
(b) all payments arising from contracts effective on or after 17 February 2012 to 31 March 2021.

PEs in Singapore, however, are required to declare such payments in their annual income tax returns and will be assessed to tax on such payments unless specifically exempted from tax.

Extension of WHT exemption for OTC financial derivatives payments

Financial institutions licensed and approved by the MAS or exempted from such licensing or approval under any Act of Parliament administered by the MAS, including an institution approved as a Finance and Treasury Centre (FTC) under s 43G of the Act, enjoy WHT exemption on all payments made on qualifying OTC financial derivatives to persons who are neither residents of nor PEs in Singapore. The WHT exemption, which would have expired on 19 May 2012, is extended to 31 March 2021 to support the growth of Singapore's derivatives market.

The extension covers tax exemption on:

(a) payments liable to be made during the period between 20 May 2012 and 31 March 2021 on contracts taking effect, extended or renewed before 20 May 2012, and
(b) all payments liable to be made on contracts taking effect, extended or renewed from 20 May 2012 to 31 March 2021.

Changes to the "designated investments" and "specified income" lists under the FSI schemes

The following tax incentive schemes enjoy exemption based on a list of specified income from a list of designated investments:

(a) Foreign trust scheme
(b) Foreign account of charitable purpose trust scheme
(c) Fund management incentive schemes
(d) Approved trustee company scheme
(e) FSI-ST scheme, and
(f) FSI-fund management scheme.

As announced in the 2012 Budget and pursuant to the MAS Circular FDD Cir 02/2012 dated 21 February 2012, the listed approach for specified income and designated investments has been simplified to keep up with industry developments.

"Specified income"

With effect from 17 February 2012, all income and gains derived from "designated investments" are considered "specified income" unless excluded. This means that unless specifically excluded, all income derived from designated investments by qualifying entities will enjoy tax exemption under the respective FSI schemes.

The excluded income and gains are:

(a) interest and other payments falling within s 12(6) other than the following income:
- interest derived from deposits with and certificates of deposits issued by approved banks and from approved Asian dollar bonds
- interest, discount, prepayment fee, redemption premium and break cost from qualifying debt securities (QDS)
- amounts payable from Islamic debt securities which are QDS
- fees and compensatory payments derived from securities lending or repurchase arrangements with certain persons.

(b) distributions made by a trustee of a real estate investment trust (REIT) that is listed on the Singapore Exchange (SGX), and

(c) distributions made by a trustee of a trust who is a resident of Singapore or a PE in Singapore, other than a trust that enjoys tax exemption under s 13C, 13G, 13O or 13X of the Act.

"Designated investments"

The list of designated investments has also been rationalised. In the revised list, stocks, shares, debts and other securities are streamlined as follows:

(a) stocks and shares of any company

(b) debt securities (bonds, notes, commercial papers, treasury bills and certificates of deposits)

(c) all other securities (including REITs and exchange traded funds constituted in the form of trusts) not already covered under other lists of designated investments:
- issued by foreign governments in foreign currency
- listed on any exchange
- issued by supranational bodies, or
- issued by any company.

The designated investments list has also been expanded to cover:

(a) private trusts that invest wholly in designated investments

(b) freight derivatives, and

(c) publicly-traded partnerships that do not carry on a trade, business, profession or vocation in Singapore.

Any securities other than QDS (previously limited to stocks and shares) issued by an unlisted company that is in the business of trading or holding of Singapore immovable properties (other than the business of property development), however, are excluded from the list of designated investments.

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¶18-170 Enhanced-tier (ET) FSI qualifying activities and criteria for ET awards

Qualifying activities

The FSI qualifying activities are listed below under the respective ET awards.

ET Award: Bond Market (FSI-BM)

(1) Arranging, underwriting and distributing any issued QDS.

(2) Trading of QDS and Qualifying Project Debt Securities (QPDS) with effect from 16 February 2008 (introduced in the 2008 Budget).

ET Award: Equity Market (FSI-EM)

(1) Arrangement, underwriting, management and placement of initial public offerings of stocks, shares, bonds and other securities issued by foreign companies, for the purpose of a listing on the SGX.

(2) Sales of stocks, shares, bonds and other securities of foreign companies listed on the SGX.

(3) Services (including brokerage, nominee and custodian services) in connection with transactions relating to stocks, shares, bonds and other securities of foreign companies listed on the SGX.

ET Award: Capital Market (FSI-CM)

(1) Trading in debt and equity markets activities.

(2) Provision of services in relation to or investing in debt and equity markets activities.

Chapter 18

With effect from 1 January 2014, the FSI-BM and FSI-EM schemes have been merged to form a new FSI-CM scheme.

ET Award: Derivatives Market (FSI-DM)

(1) Providing an intermediary service in connection with transactions relating to qualifying activities.

(2) Trading of qualifying derivatives.

(3) Trading of exchange-traded financial derivatives with effect from 16 February 2008 (introduced in the 2008 Budget).

With effect from 1 January 2014, the five sub-schemes under the FSI-DM scheme are merged into a single FSI-DM scheme.

ET Award: Credit Facilities Syndication (FSI-CFS)

Arranging, underwriting and participating in syndicated offshore credit facility or offshore guarantee facility, where the loan is used outside Singapore and interest is not deducted against income accruing in or derived from Singapore.

With effect from 1 January 2014, the FSI-CFS scheme is extended to include the provision of project finance advisory services.

Criteria for ET awards

The qualifying criteria for new applicants for a five-year (or up to 10-year depending on size and activities) ET award are as follows:

ET Award: Bond Market (FSI-BM)

(1) At least eight professional staff covering origination, trading and distribution of debt securities.

(2) The degree of expertise in origination and structuring, as well as the extent of debt sales, distribution and trading capabilities in Singapore.

ET Award: Derivatives Market (FSI-DM)

(1) At least six professional staff covering origination, structuring and trading activities in relation to financial derivatives.

(2) The extent to which the financial derivatives team in Singapore has responsibility for structuring or trading of derivatives.

ET Award: Equity Market (FSI-EM)

At least three professional staff performing corporate finance, sales/trading or research activities in Singapore.

ET Award: Credit Facilities Syndication (FSI-CFS)

At least two professional staff performing syndication functions in Singapore.

¶18-180 Standard-tier (ST) FSI qualifying activities and criteria for ST awards

Qualifying activities

The FSI qualifying activities are listed below according to the specified categories.

Category: Lending and related activities

(1) Loans in foreign currencies, other than bonds and debentures.

(2) Transactions in any foreign currencies with any banks or branch offices with regard to any of the following:

- (a) placement of funds
- (b) bankers' acceptances on bills
- (c) bills, and
- (d) negotiable certificates of deposit.

(3) Opening, advising or confirming of letters of credit denominated in any foreign currencies relating to trade transactions.

(4) Financing or re-financing of trade transactions with or without letters of credit denominated in any foreign currencies.

(5) Provision of guarantees, performance bonds, standby letters of credit and services relating to remittances denominated in foreign currencies.

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(6) Provision to any non-resident holder of a credit or charge card services in connection with the use of the card where the billings for the transactions for which the card is used is denominated in any foreign currency.

(7) Foreign currency.

Category: Debt capital market

(1) Trading in debt securities.

(2) Arranging, managing, underwriting, selling QDS.

(3) Arranging, managing, underwriting, selling or investing in foreign debt securities that are not QDS.

(4) Transacting, investing or providing services (including services as a broker, nominee or custodian) in respect of foreign debt securities.

(5) Loans of foreign debt securities under securities lending arrangements in writing.

(6) Provision of corporate advisory services.

Category: Equity capital market

(1) Arranging, managing, underwriting, selling, investing or other services (including services as a broker, nominee or custodian) in respect of foreign securities.

(2) Loans of foreign securities under securities lending arrangements in writing.

(3) Provision of corporate advisory services.

Category: Treasury

(1) Foreign exchange transactions.

(2) Services as an intermediary in connection with transactions relating to derivatives, excluding interest rate and currency swaps.

(3) Trading of derivatives, excluding interest rate and currency swaps.

(4) Services as an intermediary in connection with transactions involving interest rate or currency swaps.

(5) Trading in interest rate or currency swaps.

(6) Transactions in gold bullion or futures, silver bullion or futures, platinum bullion or futures, or financial futures.

Category: Fund management, trust administration, custodian and other advisory services

(1) Fund management or investment advisory services to a foreign investor in respect of designated investments.

(2) Services and transactions on behalf of a foreign investor in relation to foreign securities or foreign debt securities under a securities lending arrangement in writing to an ACU of a financial institution or a company with the FSI award.

(3) Provision of advisory services relating to financial matters (excluding fund management/investment advisory services).

(4) Trustee and custodian services for or on behalf of a foreign trust.

(5) Trustee and custodian services for or on behalf of a trust fund which falls within para (c) in the definition of "foreign investor" in the Income Tax (Income from Funds Managed for Foreign Investors) Regulations, S 640/2003.

(6) Custodian services for or on behalf of any foreign mutual fund corporation.

(7) Trustee and custodian services in respect of foreign bond or loan stock issues including services for monitoring loan covenants and administering loan repayments.

(8) Custodian services in respect of stocks and shares, denominated in currencies other than Singapore dollars, of companies which are neither incorporated nor resident in Singapore.

(9) Trust management and administration services in respect of foreign trusts of which the FSI company is not the trustee.

(10) Provision of investment advisory services to a foreign investor or to a foreign fund manager under a fund delegation arrangement (from 15 February 2007).

Category: Headquarter (HQ) services

Provision of the following HQ services to its approved offices (including associated companies and other persons where such offices, associated companies and other persons are outside Singapore and have been approved):

(a) general management and administration

(b) business planning and coordination

(c) procurement of raw materials and components for use in the business of its approved offices

(d) technical support services

(e) marketing control and sales promotion planning

(f) training and personnel management

(g) corporate advisory services

(h) research and analysis (economic or investment)

(i) credit control and administration

(j) research and development (R&D) work carried out in Singapore on behalf of its approved offices

(k) arranging credit facilities for its approved offices in currencies other than Singapore dollars where the funds for providing the facilities are obtained from:

  (i) financial institutions in Singapore, and

  (ii) the accumulated profits of its other approved offices

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(l) providing guarantees, performance bonds, standby letters of credit and services relating to remittances where:

(i) in the case of a guarantee, performance bond or standby letter of credit, the party in whose favour the facility is issued is an ACU of a financial institution in Singapore, or a person who is neither a resident of nor a PE in Singapore, or a PE outside Singapore of a person resident in Singapore in respect of any business carried on outside Singapore through that PE, and

(ii) in the case of services relating to remittances, the person to whom the remittances are made is an ACU of a financial institution in Singapore or is a person who is neither a resident of nor a PE in Singapore

(m) arranging interest rate or currency swaps in currencies other than Singapore dollars with:

(i) an ACU of a financial institution in Singapore

(ii) a person who is neither a resident of nor a PE in Singapore, or

(iii) a branch office outside Singapore of a company resident in Singapore

(n) managing the funds of any of its approved offices for the purpose of any designated investments within the meaning of the Income Tax (Income from Funds Managed for Foreign Investors) Regulations, S 640/2003 and where the associated company is not resident in Singapore and, unless otherwise approved by the Minister of Finance (the "Minister") or such person as he may appoint:

(i) not less than 80% of its issued share capital is beneficially owned, directly or indirectly by persons who are neither citizens of Singapore nor resident in Singapore

(ii) has no PE in Singapore other than the approved HQ company

(iii) does not carry on business in Singapore

(iv) does not beneficially own more than 20% of the issued share capital of any company incorporated in Singapore, and

(v) does not have 20% or more of its issued share capital beneficially owned, directly or indirectly, by a company which does not fall within sub-para (ii), (iii) or (iv), and

(o) trading on or after 27 February 2004 in secondary loans in any foreign currency.

Criteria for ST awards

The qualifying criteria for new applicants for a minimum five-year (or up to 10-year depending on size and activities) ST award is as follows:

ST Awards

At least five professional staff engaged in the qualifying activities in Singapore.

The number of professional staff is reduced to three where the applicant is engaged only in fund management or investment advisory services.

ST Award: FSI-HQ (Headquarter services)

(1) at least four professional staff in HQ services

(2) incur annual total business spending of at least $2m

(3) service at least two network companies outside Singapore, and

(4) perform at least three qualifying HQ services.

¶18-190 Islamic financial products and services

It was announced in the 2006 Budget that the tax treatment of Islamic financing contracts would be aligned with that of conventional financing contracts. Generally, the profits derived from Islamic financing contracts or the payouts from such contracts would be characterised as interest income or interest expense accordingly. To give the industry maximum flexibility for innovation while preventing any unintended tax consequence, the following tax rules have been prescribed for each specific Islamic finance arrangement. Section 34B provides the tax treatment for prescribed Islamic financing arrangements. This has to be read in conjunction with the MAS Circular FDD 11/2006 issued on 27 July 2006.

The ET award FSI-IF, introduced in the 2008 Budget, grants a concessionary tax rate of 5% on the qualifying income derived from the following qualifying *Shariah*-compliant activities, subject to certain conditions:

(a) lending and related activities, and

(b) fund management and other investment advisory activities.

The approval period for the FSI-IF award is from 1 April 2008 to 31 March 2013. Once approved, the successful applicant will enjoy the 5% tax rate for five years. There will be no extension of the approval period beyond 31 March 2013 or the incentive tenure beyond five years. The FSI-IF award expired on 31 March 2013 and the FSI-ST award will cover the existing qualifying Islamic finance activities.

Islamic concepts/tax treatment

Murabaha concept

Murabaha is basically a cost-plus financing. The bank will finance the purchase of an asset by buying on behalf of its customer and then on-sell it to its customer at an agreed mark-up.

Income tax — any gains or profits accrued and any expenses incurred, in lieu of interest, will be regarded as interest.

Goods and services tax (GST) — for a loan used for the purchase of non-residential property, any mark-up on the selling price of the non-residential property by the bank to the buyer will be exempt from GST, and the bank will be allowed to claim GST on the purchase of the non-residential property from the vendor in full.

Mudarabah concept

Mudarabah is a trust financing arrangement where the "*rabb-ul-mal*" (the investor or capital provider) provides funds for a specified purpose to the "*mudarib*" the investment manager) who will manage the fund for an agreed profit-sharing ratio.

Income tax — Any profit payable to a customer, in lieu of interest, by a qualifying financial institution, will be regarded as interest.

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Ijara wa iqtina concept

Ijara wa iqtina is an Islamic leasing arrangement where the bank will buy an asset and lease it to its customer with an option to purchase the asset at the end of the lease.

Income tax — any gains or profits accrued and any expenses incurred, in lieu of interest, will be regarded as interest.

GST — for a loan used for the purchase of non-residential property, any mark-up on the selling price of the non-residential property by the bank to the buyer will be exempt from GST, and the bank will be allowed to claim GST on the purchase of the non-residential property from the vendor in full.

Sukuk concept

Sukuk is the Arabic name for a financial certificate. *Sukuk* certificates are generally backed by an underlying tangible asset.

Stamp duty — stamp duty on instrument(s) related to the transfer of immovable properties that is in excess of that chargeable in the case of an equivalent conventional bond issue, may be remitted, subject to conditions. For the rules on remission, see Stamp Duties (Qualifying Financing Arrangement) (Remission) Rules 2005, S 733/2005.

BOND MARKET

¶18-210 Approved intermediary

From 1 January 2004, the FSI-BM award was merged under the FSI scheme. Income derived from ST activities is taxed at 10% while income derived from ET activities, ie arranging, underwriting and distributing any QDS will be taxed at 5% (see ¶18-180). The scope of qualifying activities under the existing FSI-BM ET award was expanded to include the trading of QDS and QPDS from 16 February 2008.

¶18-220 Income derived from debt securities

The term "debt securities" is defined in s 43N to mean bonds, notes, commercial papers, treasury bills and certificates of deposits. The term "qualifying debt securities", on the other hand, is defined in s 13(16) to mean:

- Singapore Government securities issued during the period from 28 February 1998 to 31 December 2018
- any debt securities arranged by the following during the stated period:

	Period
(1) Financial institutions	28 February 1998 to 31 December 2013
(2) Approved bond intermediaries	27 February 1999 to 31 December 2018
(3) FSI-BM companies	1 January 2004 to 31 December 2018
(4) FSI-ST and FSI-CM companies	1 January 2014 to 31 December 2018

- qualifying Islamic debt securities, subject to conditions, arranged and issued during the period from 1 January 2005 to 31 December 2018:
  - (i) by any financial institution in Singapore, and
  - (ii) by any FSI-BM company.

As announced in the 2013 Budget, the QDS scheme is extended for five years to 31 December 2018 to further promote Singapore's debt market. For debt securities issued during the period from 1 January 2014 to 31 December 2018, the current requirement that the QDS has to be substantially arranged in Singapore is met by an FSI-ST company if the Singapore office of the FSI-ST company has debt capabilities. Debt securities arranged by an FSI-CM company will be considered to have met the requirement that the QDS is substantially arranged in Singapore.

Concessionary tax rate for companies

The concessionary tax rate of 10% applies to the following income derived by any company (s 43N; Income Tax (Concessionary Rate of Tax or Exemption for Income derived from Debt Securities) Regulations, Rg 32):

- interest from any QDS
- discounts from any QDS issued from:
  - 17 February 2006 to 31 December 2018, and
  - 27 February 2004 to 16 February 2006, the tenure of which is one year or less.
- payouts from qualifying Islamic debt securities issued during the period from 1 January 2005 to 31 December 2018
- income from securities borrowing and lending arrangements
- income from borrowing and lending local securities, and
- prepayment fees, redemption premiums or break costs from QDS issued during the period from 15 February 2007 to 31 December 2018.

Exemption for non-residents

Interest derived from the QDS is exempted from tax in the hands of the following non-residents:

- non-residents without any PE in Singapore (s 13(1)(a)(i)), and
- non-residents who carry on any operation in Singapore through a PE in Singapore where the funds used by that person to acquire the QDS are not obtained from the operation (s 13(1)(a)(ii)).

The abovementioned non-residents are also not taxed on:

- discounts from any QDS issued during the period (s 13(1)(aa)):
  - from 17 February 2006 to 31 December 2018, and
  - from 27 February 2004 to 16 February 2006, the tenure of which is one year or less
- payouts from qualifying Islamic debt securities issued during the period from 1 January 2005 to 31 December 2018 (s 13(1)(ab)), and
- prepayment fees, redemption premiums or break costs from QDS issued during the period from 15 February 2007 to 31 December 2018 (s 13(1)(ba)).

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PROJECT FINANCE

¶18-230 Project finance

The tax incentive schemes for project finance other than the Financial Sector Incentive-Project Finance (FSI-PF) scheme are extended to 31 March 2017. They are as follows:

(a) Exemption of qualifying income from QPDS issued during the period from 1 January 2012 to 31 March 2017.

(b) Exemption of foreign-sourced interest income from offshore qualifying infrastructure projects/assets. received by approved entities listed on the SGX on or before 31 March 2017.

(c) Remission of stamp duty payable on instruments of transfer executed during the period from 1 January 2012 to 31 March 2017 relating to qualifying infrastructure projects/assets of qualifying entities listed or to be listed on the SGX.

(d) Concessionary tax rate of 10% on qualifying income derived by an approved trustee manager/fund manager which is approved during the period from 1 January 2012 to 31 March 2017 from managing qualifying SGX-listed business trusts/infrastructure funds in relation to qualifying offshore infrastructure projects/assets.

Although the FSI-PF scheme was not extended beyond 31 December 2011, a company that has been approved as an FSI-PF company on or before 1 December 2011 can continue to enjoy the tax concession under the FSI-PF award until the expiry of the award. A FSI-PF company approved on or before 31 December 2011 may enjoy the concessionary tax rate of 5% on qualifying income derived from:

(a) arranging, underwriting or distributing any QPDS

(b) arranging or underwriting any qualifying project loan, and

(c) providing project finance advisory services relating to a qualifying infrastructure project.

ASIAN CURRENCY UNIT

¶18-250 Asian Currency Unit

With the introduction of the FSI scheme, all ACUs are automatically granted the FSI-ST award for a period of five years from 1 January 2004 to 31 December 2008. The FSI scheme was renewed for another five years from 1 January 2009 to 31 December 2013 (2008 Budget announcement) and extended to 31 December 2018 (2013 Budget announcement). All income derived from ST qualifying activities is taxed at the concessionary tax rate of 12%.

Prior to 1 January 2011, income derived from ST qualifying activities in excess of the QB was taxed at 10% and the QB amount was taxed at the prevailing corporate tax rate. The QB was removed with effect from 1 January 2011 and the concessionary tax rate of 10% under the FSI-ST award was changed in tandem to 12%. (See Income Tax (Concessionary Rate of Tax for Financial Sector Incentive Companies) Regulations 2005, S 735/2005.)

ACUs are separate departments in banks that are licensed to handle Asian dollar business. These units are allowed to accept external deposits from non-residents and residents of Singapore, lend funds to residents of scheduled territories as well as outside the scheduled territories, and also lend funds to banks in Singapore and other ACUs.

Asian dollars, an offshoot of Euro dollars, are similar to Euro dollars except that they are held in Asia. They comprise US dollars, German deutsche marks, Swiss francs, Japanese yen, etc, deposited in Singapore and lent out to the Asian region. These "offshore funds" are deposited outside their respective countries and provide a vehicle for regional financing. The main depositors are multinational corporations, regional companies, government bodies, Asian central banks, foreign banks and businessmen. The borrowers of Asian dollars are housed mainly in the Asia Pacific region and comprise local and regional companies, development and commercial banks, government central banks and export orientated firms.

Singapore has given several tax concessions to encourage the growth of the Asian dollar market in Singapore and the region. These concessions apply to the offshore income derived by taxpayers from operations carried on in the Asian dollar market. The meaning of "offshore income" has been extended to all types of income derived from ACU operations except for income derived from exchange profits arising from transactions in Singapore dollars or income derived from transactions with domestic banking units and residents.

TRUSTEE SERVICES

¶18-270 Approved trustee company

An approved trustee company is subject to a concessionary tax rate of 10% on income derived from the provision of qualifying trustee and custodian services, trust management and administration services (s 43J; Income Tax (Concessionary Rate of Tax for Approved Trustee Companies) Regulations, Rg 21). From 1 April 2011, the list of qualifying activities includes the provision of trustee and custodian services in respect of the issue of units to foreign collective investment schemes and foreign business trusts.

Award recipients approved on or after 1 April 2011 will be granted a 10-year award tenure. All existing award recipients will automatically transit to the new framework on 1 April 2011 and they will enjoy the scheme for a 10-year period ending on 31 March 2021.

A sunset clause with a deadline of 31 March 2016 was introduced to allow a regular review of the relevance of the scheme.

COMMODITY FUTURES MARKET

¶18-300 Incentives for commodity futures market

Incentives for futures members of the SGX (see ¶18-310) and members of the Singapore Commodity Exchange Limited (SICOM) (see ¶18-320) were discontinued on 31 December 2010 (2010 Budget announcement). The tax incentive schemes have

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been streamlined for better incentive administration. From 1 January 2011, new incentive applicants which engage in qualifying transactions will have to apply for the FSI scheme.

As a transition measure, futures members of the SGX and members of SICOM who were incentivised under the previous tax incentives schemes were allowed to transit to the FSI-ST scheme automatically on 1 January 2011 provided they notified the MAS by 31 July 2010 of their intent to transit. They would not be subject to the approval criteria for the FSI-ST award at the point of transition in January 2011. However, they would be subject to the prevailing FSI-ST renewal criteria when they applied for renewal of their awards in December 2013.

¶18-310 Futures member of the Singapore Exchange

Futures members of the SGX are subject to the concessionary tax rate of 10% on dealing profits, fees and commissions from and on interest in connection with any of the following transactions (s 43D; Income Tax (Concessionary Rate of Tax for Futures Members of the Singapore Exchange) Regulations, Rg 16):

- any non-S$ transaction, in financial futures carried out on a specified exchange or in gold bullion or gold futures carried out on any gold exchange or in any gold market or in petroleum futures with:
  - (i) an ACU of a financial institution
  - (ii) another futures member of the SGX
  - (iii) a person who is neither a resident nor a PE in Singapore
  - (iv) a branch outside Singapore of a Singapore resident company
  - (v) a foreign investor where such transaction is carried out through an approved ACU of a financial institution or an AFM, or
  - (vi) in the case of petroleum futures transactions, an approved oil trading company
- any non-S$ or approved currency spot transactions with a person specified in (i) to (v) above.

A lower concessionary tax rate of 5% will apply to incremental income of a corporate futures member provided the member is one of the top 20 corporate futures members ranked on the basis of total trading volume generated for an approved new derivative product and the member must have been a corporate futures member for at least three years immediately preceding that qualifying YA.

The concessionary tax rate of 5% also applied to total income derived from approved derivative products that commenced trading for the first time on the SGX during the period from 1 January 2002 to 31 December 2006 (Income Tax (Concessionary Rate of Tax for Income from Transactions in Approved Derivatives Products) Regulations 2003, S 639/2003) with a person referred to in (i) to (iv) above and a specified foreign investor. For each new approved derivative product, the concessionary tax applied for three years. To qualify for the 5% tax rate, corporate futures members of the SGX must have been among the top 20 corporate futures members ranked on the basis of total trading volume generated for an approved new derivative product. Where the futures members were not the top 20 corporate future members, the 10% concessionary tax rate would apply to the total income derived from these new derivative products.

The concessionary tax treatment under s 43D is no longer applicable to any income derived on or after 1 January 2011 (s 43D(5)).

¶18-320 Member of the Singapore Commodity Exchange Limited

Corporate members of SICOM are taxed at the concessionary rate of 10% on the following income:

- dealing profits, fees and commissions from relevant transactions, and
- interest derived from deposits held as a margin for commodity futures transactions in the Singapore Commodity Exchange, or for commodity futures transactions in specified commodity futures on specified exchanges or markets.

"Relevant transactions" are foreign currency denominated transactions in commodity futures carried out on the Singapore Commodity Exchange, or in specified commodities carried out on corresponding specified exchanges or markets, with:

- an ACU of a financial institution
- another member of the Singapore Commodity Exchange
- a person who is neither resident in Singapore nor a PE in Singapore, or
- a branch office outside Singapore of a Singapore resident company.

These laws are contained in s 13(1)(p), s 43K and the Income Tax (Concessionary Rate of Tax for Members of Commodity Futures Exchange) Regulations, Rg 17.

The concessionary tax treatment is no longer applicable to any income derived on or after 1 January 2011 (s 43K(2)).

¶18-330 Commodities derivatives trading company

Upon the expiry of the commodities derivatives trading (CDT) company scheme on 26 February 2009, the CDT scheme was extended and subsumed under the FSI-DM scheme for the period from 27 February 2009 to 31 December 2013 (both dates inclusive), under the FSI-DM (CDT) award. The FSI-DM scheme has been extended for five years to 31 December 2018.

An approved CDT company is taxed at the concessionary tax rate of 5% on income derived from the qualifying activities (s 43S(1)):

(a) trading in commodity derivatives and physical commodities where:

   (i) the trade volume of physical commodities does not exceed 15% of the total trade volume of commodity derivatives and physical commodities for each YA throughout the incentive period, and

   (ii) the trading of physical commodities is in connection with and incidental to any related CDT

(b) services as an intermediary in connection with transactions relating to commodity derivatives.

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Commodity derivatives are defined as derivatives that are transacted over the counter (OTC) whose payoffs are linked, in whole, to the payoffs or performance of underlying commodities. From 27 February 2009, the definition of commodity derivatives was expanded to include emission derivatives under the FSI-DM (CDT) award. The concessionary tax rate does not apply to derivatives whose payoffs are linked, whether in whole or in part, to the payoffs or performance of any underlying financial instruments such as securities, indices or currencies.

To qualify for the concessionary tax rate, the CDT must have derived the income as an intermediary for the following persons:

(a) an ACU of a financial institution
(b) an approved global trading company
(c) another CDT
(d) a person who is neither a resident of nor a PE in Singapore
(e) a branch office outside Singapore of a company resident in Singapore
(f) a member of the Singapore Commodity Exchange
(g) an approved oil trading company
(h) an approved international commodity trading company
(i) a person carrying on the business of refining petroleum in Singapore, or
(j) an approved petrochemical manufacturing company in Singapore.

¶18-335 Clearing member of Singapore Clearing House

Prior to 17 February 2006, members of any clearing facility were subject to tax at 20% on income derived from the provision of clearing services. To promote OTC derivatives clearing activities in Singapore, approved clearing members of a Singapore clearing house are subjected to tax at a 5% concessionary rate on income derived from the provision of OTC derivatives clearing services in Singapore for a period of five years (s 43V).

The window period for clearing members to qualify for this concessionary tax rate is from 17 February 2006 to 16 February 2011.

¶18-340 Approved securities company

An approved securities company is subject to a concessionary tax rate of 10% on income derived from specified derivatives activities (s 43A; the Income Tax (Concessionary Rate of Tax for Derivatives Activities) Regulations 2003, S 637/2003 (revoked)).

Qualifying income is the income derived from services as an intermediary in connection with transactions relating to financial derivatives and trading in financial derivatives for or with entities specified in reg 3 of the above Regulations.

Where an approved securities company is also an ADT, a lower concessionary tax rate of 5% will apply to income derived from qualifying ADT services, ie acting as an intermediary in connection with transactions relating to OTC financial derivatives and trading in OTC financial derivatives for and with persons specified in reg 4 of the above Regulations.

The approved securities company incentive has been merged into the FSI scheme.

FUND MANAGEMENT

¶18-350 Fund management

From 1 January 2004, existing tax incentives granted to the fund management industry are merged into the FSI scheme. Approved fund managers other than those that have been granted tax exemption will transit to the FSI-AFM scheme and will be granted the ST award from 1 January 2004 up to the expiry date of their existing awards. These fund managers would be eligible for the 10% concessionary tax rate.

Approved fund managers that have been granted tax exemption will not be included in the FSI scheme until their existing awards expire. Upon expiry of their award, they can apply for the FSI-AFM award to be taxed at the rate of 10% on the income from ST activities.

Enhanced-Tier Fund Tax Incentive Scheme

The Enhanced-Tier (ET) Fund Tax Incentive Scheme, introduced in 2009, aims to better position Singapore as a hub for fund management. The scheme enhances the existing fund management incentives and is available from 1 April 2009 to 31 March 2014. As announced in the 2014 Budget, the scheme has been extended for five years to 31 March 2019. The ET fund can be constituted as a company, trust or limited partnership. It must have a minimum fund size of $50m at the point of application, among other conditions. There is no limit as to the amount of investments that a Singapore investor can place in the ET fund.

An approved ET fund enjoys tax exemption on specified income derived from designated investments for the entire duration of the fund. As announced in the 2014 Budget, the list of designated investments has also been expanded to include loans to qualifying offshore trusts, interests in certain limited liability companies and bankers' acceptance. Income derived on or after 21 February 2014 from such investments will also enjoy tax exemption.

Any expenses incurred in excess of its specified income and any loss arising from the sale of designated investments will be disregarded and cannot be set off against other taxable income of the ET fund.

Sunset clause

A sunset clause was introduced for both the ET and the existing fund management incentives at the incentive scheme level. Both incentives will expire on 31 March 2019.

2015 Budget announcement

As announced in the 2015 Budget, the ET Fund Tax Incentive Scheme will be enhanced for master-feeder fund structures that hold their investments via Special Purpose Vehicles (SPVs) by extending the existing concession to SPVs held by the master-feeder fund subject to conditions. Master-feeder funds and SPVs within a master-feeder fund structure may apply for the ET Fund Tax Incentive Scheme and meet the economic conditions on a collective basis. This change will take effect for applications made from 1 April 2015.

The MAS will release further details of the change by May 2015.

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¶18-380 Income from funds managed for non-resident investors

Non-resident foreign investors are exempted from tax on specified income derived from funds managed by:

- any fund manager in Singapore holding a capital markets services licence under the *Securities and Futures Act* or a company that is exempted under that Act, or
- an approved start-up fund manager.

Eligible foreign investors are:

(a) individuals who are not citizens of Singapore and who are not tax residents in Singapore

(b) companies not resident in Singapore where not more than 20% (excluding the total percentage owned directly by designated persons) of the total number of its issued shares is beneficially owned, directly or indirectly by persons who are citizens of Singapore or residents of Singapore, or

(c) trust funds where not more than 20% (excluding the total percentage owned directly by designated persons) of the value of the fund is beneficially held, directly or indirectly by persons who are not foreign investors referred to in (a) and (b).

As announced in the 2014 Budget, the scheme has been extended to include trust funds with resident trustees with effect from 1 April 2014.

To qualify for the tax exemption, the following conditions must be satisfied:

(a) the investors or beneficiaries of the funds must be non-residents

(b) the fund managers must affirm the non-resident status of their clients by completing the prescribed information sheets, and

(c) the funds must be invested in designated investments as set out in the Income Tax (Income from Funds Managed for Foreign Investors) Regulations 2003, S 640/2003.

With effect from 17 February 2012, the list of "specified income" has been liberalised into an exclusion list. This means that all income and gains derived from "designated investments" are considered "specified income" unless excluded.

The excluded income and gains are:

(a) interest and other payments falling within s 12(6) other than the following income:

- interest derived from deposits with and certificates of deposits issued by approved banks and from approved Asian dollar bonds
- interest, discount, prepayment fee, redemption premium and break cost from QDS
- amounts payable from Islamic debt securities which are QDS
- fees and compensatory payments derived from securities lending or repurchase arrangements with certain persons.

(b) distributions made by a trustee of a REIT that is listed on the SGX, and

(c) distributions made by a trustee of a trust who is a resident of Singapore or a PE in Singapore, other than a trust that enjoys tax exemption under s 13C, 13G, 13O or 13X of the Act.

The list of designated investments has also been streamlined as follows:

(a) stocks and shares of any company

(b) debt securities (bonds, notes, commercial papers, treasury bills and certificates of deposits)

(c) all other securities (including REITs and exchange traded funds constituted in the form of trusts) not already covered under other lists of designated investments:

- issued by foreign governments in foreign currency
- listed on any exchange
- issued by supranational bodies, or
- issued by any company.

The designated investments list has also been expanded to cover:

(a) private trusts that invest wholly in designated investments

(b) freight derivatives, and

(c) publicly-traded partnerships that do not carry on a trade, business, profession or vocation in Singapore.

Any securities other than QDS (previously limited to stocks and shares) issued by an unlisted company that is in the business of trading or holding of Singapore immovable properties (other than the business of property development), however, are excluded from the list of designated investments.

The changes to the "specified income" and "designated investments" lists were announced in the 2012 Budget and released by the MAS in Circular FDD Cir 02/2012 dated 21 February 2012.

As announced in the 2014 Budget, the list of designated investments has also been expanded to include loans to qualifying offshore trusts, interests in certain limited liability companies and bankers' acceptance. Income derived on or after 21 February 2014 from such investments will also enjoy tax exemption.

¶18-400 Equity capital market intermediary

Under the FSI-EM scheme, an ECMI will be taxed at the rate of 5% on income derived from its ET activities (see ¶18-170) and at the rate of 10% on income derived from its ST activities (see ¶18-180).

An ECMI refers to:

- a financial institution with an ACU, or
- a company holding a capital markets services licence under the *Securities and Futures Act* to deal in securities or one that is exempted from holding such a licence (reg 2, Income Tax (Concessionary Rate of Tax for Equity Capital Market Intermediary) Regulations 2003, S 638/2003 (revoked by S 735/2005) read with s 43A and 43Q).

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The 5% and 10% concessionary rates of tax will apply to income derived from the qualifying activities as set out in the Income Tax (Concessionary Rate of Tax for Financial Sector Incentive Companies) Regulations 2005, S 735/2005.

With effect from 1 January 2014, the FSI-BM and FSI-EM schemes has been merged to form a new FSI-CM scheme.

¶18-450 Credit Facilities Syndication

From 1 January 2004, qualifying financial institutions are granted the FSI-CFS awards. With effect from 1 January 2014, the FSI-CFS scheme is extended to include the provision of project finance advisory services. Income derived from ET activities (see ¶18-170), if any, and ST activities (see ¶18-180) is taxed at the concessionary tax rates of 5% and 10% respectively. To qualify for the five-year ET award, there must be at least two professional staff performing syndication functions, namely originating the facility, structuring the facility, running the book, facility documentation or facility agency, in Singapore.

Income derived by ACUs and approved securities companies in Singapore from qualifying international loan syndication activities (ie syndicated offshore facility as defined in reg 3, Income Tax (Exemption of Income from Syndicated Offshore Facilities) Regulations 2003, S 183/2003) for agreements made up to 31 December 2003 was exempt from tax. Note that these companies were granted automatic tax exemption throughout the tenure of the each qualifying syndicated loan made on or before 31 December 2003. For example, where a 10-year syndicated loan was made on 31 March 2003, interest income from 31 March 2003 to 30 March 2010 would be exempt from tax.

A similar exemption also applies to any syndicated offshore credit facility, syndicated guarantee facility or syndicated offshore underwriting facility for agreements made up to 31 March 2003 (as defined in reg 3, Income Tax (Exemption of Income from Syndicated Offshore Credit and Underwriting Facilities) Regulations 2003, Rg 4).

The MAS has issued Circular FPD Cir 01/1999 "How to Qualify under the Tax Exemption Scheme for Syndicated Facilities" specifying the qualifying criteria. Note that the tax exemption will apply automatically once the qualifying criteria is met.

The MAS has singled out the following items of income and expenditure that may arise from loan syndication:

(a) Income — Interest, manager fees, participation fees, commitment fees, agency fees, guarantee fees, underwriting fees from bonds.

(b) Identifiable expense items — Cost of funds, consultancy and legal fees, printing, travel and entertainment, telecommunication, secretarial.

(c) Unidentifiable expense items — Salaries, rentals and other incidental expenses.

Apart from interest costs, expenditure incidental to a syndicated loan is usually arranged in one of the following ways:

(a) the borrower may agree to reimburse all or part of the expenditure incurred by the lead manager in syndicating the loan, or

(b) the borrower may agree to pay a fixed sum in respect of expenditure incidental to the syndication.

Where the actual expenditure incurred exceeds the sums recoverable from the borrower, the lender must deduct these net expenses against the exempt income derived from the loan syndicated. Where the amount recovered exceeds the actual expenditure incurred, the difference will be the lender's income qualifying for tax exemption.

The tax exemption is provided for under s 13(1)(y), 43A and the Income Tax (Income from Syndicated Offshore Credit and Underwriting Facilities) Regulations. The Regulations provide that the following conditions must be fulfilled unless they are waived by the Minister:

(a) There must be a minimum of three lenders.

(b) The lead manager of the syndicate must be a financial institution resident in, or which is a PE of, a non-resident financial institution in Singapore or an approved securities company. If there are two or more lead managers, at least half of them should be financial institutions or approved securities companies in Singapore.

(c) A substantial part of the processing of the syndicated loan should be carried out in Singapore.

(d) The loan must be an offshore loan. It must be made to persons outside Singapore to be used outside Singapore. The scheme was enhanced in 2009 to allow the onshore use of part of the syndicated facility proceeds to pay for certain incidental expenses incurred in connection with any qualifying facility signed on or after 1 May 2009. The proceeds used in Singapore for this purpose cannot exceed 10% of the total proceeds from the facility. Notwithstanding this, only income derived from the loan used offshore qualifies for the 5% concessionary tax rate.

(e) The loan must be in a currency other than Singapore dollars.

(f) The interest, fee, commission or other payment on the loan must not be borne, directly or indirectly, by a resident or PE in Singapore.

FINANCIAL SECTOR INCENTIVES

¶18-500 Financial Sector Incentive — Headquarter Services (FSI-HQ) scheme

From 1 January 2004, all companies with OHQ status were granted the FSI-HQ ST award up to the end of the expiry period stated in their original OHQ awards. An OHQ is defined as an entity incorporated or registered in Singapore for the purpose of providing management, technical or other supporting services to subsidiaries, related and/or associated companies (or their branches) in other countries. The OHQ will be the regional control centre with all-round regional management centralisation and control from Singapore. Besides providing HQ support for the regional network, the OHQ could also be involved in manufacturing, assembly or other service activities.

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Multinationals and other world industry leaders across a diversity of industries are encouraged to base their Asia-Pacific or global HQ operations in Singapore. It is envisaged that these multinationals can manage their regional or international operations, spearhead new developments and undertake high value-added activities more effectively from their base in Singapore.

To further encourage financial institutions to manage and control their regional or global operations from Singapore, the FSI-HQ scheme is made available from 22 January 2009 to 31 December 2018 (the scheme was extended for five years upon its expiry on 31 December 2013 as announced in the 2013 Budget) to a company that:

(i) is wholly owned, directly or indirectly by, or wholly owns directly or indirectly, another company that is licensed or approved by the MAS or by the financial supervisory authority in its home country, and

(ii) provides treasury, investment or financial services in Singapore for any of its offices or its associated companies.

Such a FSI-HQ company will be subject to tax at the concessionary tax rate of 10% on income derived from the provision of HQ services to Singapore-based associates and offices.

The Qualifying Processing Services Company (QPC) scheme (see ¶18-550) was subsumed under the FSI-HQ scheme from 22 January 2009. Income from providing prescribed processing services in Singapore to any financial institution or to another FSI-HQ company is taxed at a concessionary rate of 10%.

The criteria for the FSI-HQ award for new applicants and the ST activities that qualify for the 10% concessionary tax are listed in ¶18-180. The qualifying OHQ activities can be found in the Income Tax (Concessionary Rate of Tax for Approved Headquarters Company) Regulations, Rg 6.

All income derived from qualifying activities under the FSI-HQ scheme is subject to tax at a concessionary tax rate of 10%. The 10% concessionary rate would apply to income derived from the following activities (s 43E):

(a) trading in foreign exchange and offshore investments

(b) prescribed treasury, investment, or financial activities

(c) provision of qualifying services to overseas subsidiaries or associated and related companies, and

(d) arrangement of loans from financial institutions in Singapore and extending such loans to regional subsidiaries or associated and related companies.

Note that an FSI-HQ company can apply for exemption from WHT when making interest payments to qualifying persons on qualifying loans entered into during the period from 22 January 2009 to 31 December 2013. With effect from 25 February 2013, the exemption from WHT is granted automatically to an FSI-HQ company on interest payments made during the period as an FSI-HQ company for qualifying loans.

2015 Budget announcement

As announced in the 2015 Budget, as a result of the regular review of tax incentives to simplify the tax regime, the FSI-HQ award will be withdrawn from 1 October 2015. Companies performing qualifying headquarter activities or services in Singapore may apply for the Development and Expansion Incentive under the *Economic Expansion Incentives (Relief from Income Tax) Act (Cap 86, 2005 Revised Ed)*.

¶18-550 Qualifying Processing Services Company

The QPC incentive was subsumed under the FSI-HQ scheme (see ¶18-180) with effect from 22 January 2009. Under the FSI-HQ scheme, an FSI-HQ company providing prescribed processing services would be subject to tax at the concessionary tax rate of 10% on all income derived from the provision of such services, including income derived from prescribed processing services provided to any financial institution or to another FSI-HQ company.

Companies approved under the old QPC scheme will continue to enjoy the concessionary tax rate of 5% until the end of their respective tax incentive tenures. Thereafter, they can apply for renewal under the FSI-HQ scheme.

Under the old QPC scheme, introduced in 2004, the QPC approval was granted to an eligible company for a period of five, seven or 10 years but no approval would be granted on or after 27 February 2009 (s 43R(3)). A QPC was taxed at the concessionary rate of 5% on income derived from the provision of the prescribed processing services to financial institutions (s 43R(1)).

Prescribed core processing services include settlement and reconciliation, cash management, product control, securities borrowing/lending processing, portfolio valuation. Ancillary services such as risk management, IT processing, financial control, compliance and legal, and management information and reporting, which are in support of the core processing services, may also qualify under the incentive (see MAS Circular FDD Cir 05/2004 for details on the incentive).

INSURANCE BUSINESS

¶18-610 Offshore insurance business

Insurance companies are eligible for the concessionary tax rate of 10% on qualifying income derived from carrying on offshore general insurance, offshore life insurance or offshore composite insurance business in Singapore if they are registered under the *Insurance Act (Cap 142, 2002 Revised Ed)* to carry on general insurance business or life insurance business or both.

The following income would qualify for the concessionary tax rate if the insurance company has not elected to be taxed on these types of income at the normal tax rate:

- income derived from accepting general insurance and reinsurance covering offshore risks, and

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- dividends and interest derived from outside Singapore, gains or profits realised from the sale of offshore investments, and interest from ACU deposits derived from:
  - (a) the investment of the insurance company's insurance fund established for its offshore insurance business, and
  - (b) the investment of its shareholders' funds established in Singapore to support its offshore insurance business.

The offshore insurance fund income subject to tax at 10% is ascertained by the direct identification of the qualifying income concerned. The qualifying income from the shareholders' fund has to be ascertained by a specific formula. The formula for computing qualifying dividends, interest and gains or profits from the sale of offshore investments, derived from the investment of an insurance company's shareholders' funds, is set out in the following Regulations pursuant to s 43C:

- Income Tax (Concessionary Rate of Tax for Approved Offshore Composite Insurance Companies) Regulations, Rg 27
- Income Tax (Concessionary Rate of Tax for Approved Offshore General Insurance Companies) Regulations, Rg 26, and
- Income Tax (Concessionary Rate of Tax for Approved Offshore Life Insurance Companies) Regulations, Rg 28.

The offshore insurance business incentive scheme was enhanced by applying a 5% concessionary tax rate to an insurer (other than a captive insurer, a marine and hull liability insurer or an insurer underwriting specialised insurance risks) on income derived from offshore Islamic insurance (*takaful*) or reinsurance (*retakaful*) business. The approval period for this concessionary tax rate is from 1 April 2008 to 31 March 2013 (both dates inclusive), with each successful applicant enjoying the incentive for a period of five years.

In line with the Government's policy to review tax incentives on a regular basis and to encourage companies to grow their presence in Singapore, the following changes were made to the above incentive with effect from 1 April 2010:

(a) the incentive will be subject to a sunset clause of five years until 31 March 2015 (ie no approval will be granted after 1 April 2015) (s 43C(1A)(a))

(b) the incentive will be awarded to an approved recipient for a period of 10 years, and

(c) a new headcount requirement will be imposed for incentive recipients (except for captive insurers).

To facilitate the transition of existing incentive recipients to the revised incentive framework, existing incentive recipients were given a three-year transition period from 1 April 2010 to 31 March 2013 to meet the necessary headcount requirement in order to continue to qualify for the incentive after 31 March 2013 for the remaining tenure of their awards.

New applicants would be required to meet the headcount criterion at the point of application for the tax incentive from 1 April 2010.

As announced in the 2013 Budget, the offshore insurance business incentive scheme for the concessionary rate of tax of 5% on income derived from offshore Islamic insurance (*takaful*) or reinsurance (*retakaful*) business expired on 31 March 2013 and was not extended.

Insurers that conduct offshore Islamic insurance or reinsurance businesses may apply to the MAS for a concessionary tax rate of 10% on qualifying income derived from carrying on offshore insurance businesses.

2015 Budget announcement

As announced in the 2015 Budget, to strengthen Singapore's value proposition as an Asian insurance and reinsurance centre, the insurance business development incentive will be extended till 31 March 2020. The concessionary tax rate of 10% will remain unchanged. In addition, a renewal framework will be introduced with effect from 1 April 2015 to encourage existing incentive recipients to continue to expand their operations in Singapore.

The MAS will release further details by May 2015.

¶18-620 Financial guarantee business

Since 1998, approved insurers and reinsurers in Singapore are permitted to write financial guarantee business. Basically, a financial guarantee insurer underwrites the repayment of principal and interest to investors in medium and long-term debt securities in the event of payment default by the debt securities issuer.

The interest element of the payments made by the financial guarantee insurer to foreign investors is subject to WHT as it is deemed to be sourced in Singapore under s 12(6).

From 25 February 2000, claim payments made under a financial guarantee insurance policy by an approved financial guarantee insurer to non-residents are exempt from tax under s 13(4) and therefore not subject to WHT (Income Tax (Exemption of Interest and Other Payments for Economic and Technological Development) (No 2) Notification 2000 (revoked)). However, the WHT exemption scheme for financial guaranty insurers has been withdrawn with effect from 19 February 2011 (announced in the 2011 Budget). The objective of the scheme has been assessed to be no longer relevant to merit a tax incentive.

¶18-630 Captive insurance

A captive insurer is generally a limited purpose insurance company set up to underwrite the risks of its parent company and related companies within the group.

Currently, approved captive insurance companies are taxed at a concessionary rate of 10% (where an approved insurance company is an approved marine hull and liability insurer, tax exemption is granted on certain qualifying income) on the following income:

- income derived from accepting insurance covering offshore risks, and

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- dividends and interest derived from outside Singapore, the gains or profits realised from the sale of offshore investments, and interest from ACU deposits derived from:
  - (i) the investment of its insurance fund for offshore insurance business, and
  - (ii) the investment of its shareholders' funds used to support the offshore insurance business.

An approved captive insurance company will be granted tax exemption on the above income for a period of 10 years. The window period for captive insurance companies to be approved for tax exemption is from 17 February 2006 to 16 February 2011 and has been extended to 31 March 2018 (announced in the 2011 Budget). An award renewal framework was also introduced for incentive recipients with effect from 19 February 2011.

Details of the scheme are set out in the MAS Circular FDD03/2011 dated 18 April 2011.

¶18-640 Insurance tax incentive schemes

Marine hull and liability insurance tax incentive scheme

Approved marine hull and liability insurers are exempt from tax on qualifying income derived from the carrying on of marine hull and liability insurance businesses for up to 10 years.

The following changes were announced in the 2011 Budget:

(a) the scheme is subject to a sunset clause with a deadline of 31 March 2016, and

(b) an award renewal framework is introduced for incentive recipients with effect from 19 February 2011.

Further details are set out in the MAS Circular FDD03/2011 dated 18 April 2011.

Specialised insurance tax incentive scheme

Insurers on the above scheme are exempt from tax on qualifying income derived from the carrying on of qualifying offshore specialised insurance business for a period of five years. The specialised insurance business lines under this scheme are terrorism, political, energy, and aviation and aerospace risks.

The sunset clause has been extended from 31 August 2011 to 31 August 2016. The following enhancements which took effect from 19 February 2011 were also announced in the 2011 Budget:

(a) agriculture insurance is included as a new qualifying specialised insurance business line, and

(b) an award renewal framework is introduced for incentive recipients.

Further details are set out in the MAS Circular FDD03/2011 dated 18 April 2011.

As announced in the 2013 Budget, to encourage the underwriting of severe and volatile catastrophe risks from Singapore, tax exemption is granted on qualifying income derived from offshore Catastrophe Excess of Loss reinsurance layers, which provides coverage for more than one risk arising from a single event and against natural perils. The change took effect from 25 February 2013.

FINANCE AND TREASURY CENTRE

¶18-650 Finance and Treasury Centre

Multinational companies with worldwide businesses and financial activities are encouraged to expand their treasury and risk management activities in Singapore. They are encouraged to set up Finance and Treasury Centres (FTCs) in Singapore to perform treasury, financing and other financial services for their own account, and for companies in their group.

An existing company or office that is registered in Singapore can carry out the FTC activities. However, these FTC activities have to be segregated from existing activities of the Singapore company or office for the purpose of the FTC incentive. Alternatively, a new company could be incorporated or a new office set up in Singapore to carry out the FTC activities. The FTC is expected to have its own management staff and skilled personnel in Singapore who are able to provide FTC services.

Tax benefit

The following income of an FTC is subject to a concessionary tax rate of 10% (s 43G):

- income earned on its own accounts from qualifying activities, and
- income from the provision of qualifying services to approved offices and associated companies.

The tax concession is for an initial period of up to 10 years and may be extended for a further period not exceeding 10 years. A sunset clause with a deadline of 31 March 2016 was introduced in the 2011 Budget. No company will be granted approved FTC status after 31 March 2016.

The types of qualifying activities and services are defined in the Income Tax (Concessionary Rate of Tax for Approved Finance and Treasury Centre) Regulations, Rg 18. The qualifying FTC services include:

- regional and international treasury management functions such as foreign exchange trading and management, financial futures trading, securities trading, money market transactions, capital market transactions and other risk management activities in foreign currencies with specified parties
- global and regional fund management and other related activities such as custodian services, portfolio performance evaluation, etc
- provision of credit facilities where the funds for providing the facilities are obtained from financial institutions in Singapore (and are not denominated in the Singapore dollar) or from surpluses of network companies
- corporate finance and corporate advisory services, eg flotation of shares and bond issues and management of third party warrants and options, etc
- financial, economic and investment research and analysis; and credit control and administration
- trading and arranging of derivatives with specified counter-parties, and

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- transacting and investing in the units of any qualifying unit trust (ie one which engages wholly in qualifying activities that an FTC can carry out on its own account under the FTC incentive).

Exemption of income from funds managed for foreign investors

Specified income received by approved subsidiaries, related companies, offices and associates of an approved FTC outside Singapore, from funds managed by the approved FTC, is exempted from tax (s 13C; Income Tax (Income from Funds Managed for Foreign Investors) Regulations, S 640/2003). However, such exemption does not apply to interest and dividends derived from Singapore.

As announced in the 2012 Budget and pursuant to the MAS Circular FDD Cir 02/2012 dated 21 February 2012, the list of "specified income" has been liberalised into an exclusion list. This means that "specified income" is no longer restricted to certain defined streams of income. With effect from 17 February 2012, all income and gains derived from "designated investments" are considered "specified income" unless excluded.

The excluded income and gains are:

(a) interest and other payments falling within s 12(6) other than the following income:
  - interest derived from deposits with and certificates of deposits issued by approved banks and from approved Asian dollar bonds
  - interest, discount, prepayment fee, redemption premium and break cost from QDS
  - amounts payable from Islamic debt securities which are QDS
  - fees and compensatory payments derived from securities lending or repurchase arrangements with certain persons.

(b) distributions made by a trustee of a real estate investment trust that is listed on the SGX, and

(c) distributions made by a trustee of a trust who is a resident of Singapore or a PE in Singapore, other than a trust that enjoys tax exemption under s 13C, 13G, 13O or 13X of the Act.

The list of designated investments has also been streamlined as follows:

(a) stocks and shares of any company

(b) debt securities (bonds, notes, commercial papers, treasury bills and certificates of deposits)

(c) all other securities (including real estate investment trusts and exchange traded funds constituted in the form of trusts) not already covered under other lists of designated investments:
  - issued by foreign governments in foreign currency
  - listed on any exchange
  - issued by supranational bodies, or
  - issued by any company.

The designated investments list has also been expanded to cover:

(a) private trusts that invest wholly in designated investments
(b) freight derivatives, and
(c) publicly-traded partnerships that do not carry on a trade, business, profession or vocation in Singapore.

Any securities other than QDS (previously limited to stocks and shares) issued by an unlisted company that is in the business of trading or holding of Singapore immovable properties (other than the business of property development), however, are excluded from the list of designated investments.

APPROVED VENTURE COMPANY

¶18-700 Approved venture company

Singapore encourages companies to invest overseas in approved investments. Qualifying income derived by approved venture companies from approved investments is either exempted from tax or is subjected to tax at a concessionary rate of 10% (s 13H). The tax relief period is for an initial period of up to 10 years and may be extended for another five years.

A "venture company" is defined as a company whose business consists wholly or mainly of making approved investments, and whose income is principally derived from those investments. The following investments must be approved by the Minister for the purposes of s 13H:

- debentures, stocks, shares, bonds, notes or warrants issued by a government or company
- rights or options in respect of such debentures, stocks, shares, bonds, notes or warrants, or
- units in any unit trust.

Income eligible for exemption

The following income of an approved venture company is exempted from tax (Income Tax (Exemption of Income of Approved Venture Company) Regulations, Rg 22):

- dividends derived from outside Singapore and received in Singapore from approved investments in any company not resident in Singapore
- interest derived from outside Singapore and received in Singapore in respect of approved convertible loan stock of a company not resident in Singapore, and
- gains or profits derived from Singapore or received in Singapore from outside Singapore from the disposal of an approved investment.

When computing the gains or losses from the disposal of approved investments, the earliest purchased investments are deemed to have been disposed of first.

Ascertaining exempt income

When calculating the tax exempt income of an approved venture company, the following amounts must be deducted (s 13H(4)):

- allowable expenses and donations for the YA which are attributable to the income

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- losses which arose in the YA from the disposal of approved investments
- any capital allowances for that YA, even if no claim has been made, and
- any expenses, losses or allowances carried forward from the previous YA. Note that this mandatory deduction is not subject to the shareholders continuity test imposed under s 23 or 37 and the business continuity test under s 23.

These deductions can only be made against tax exempt income during the tax exemption period specified by the Minister. Any deductions that remain unabsorbed at the end of the tax exempt period can be deducted firstly against other income for the same YA, and any unabsorbed balance is then carried forward for set-off against other income, subject to the abovementioned tests being satisfied.

Where the income of an approved venture company is exempted from tax immediately before being taxed at the concessionary tax rate, any unabsorbed deductions at the end of the tax exempt period must firstly be set off against concessionary income and thereafter against any other income for that YA and for any subsequent YA.

Ascertaining income subject to concessionary tax rate

In calculating the concessionary income, the same rules for determining the tax exempt income also apply. The exception is that, when deducting capital allowances or losses carried forward from the previous YA, this mandatory deduction is subject to the provisions of s 23, 37 and 37B.

2015 Budget announcement

As announced in the 2015 Budget, in recognition of the importance of venture capital activity in supporting entrepreneurship by fund management companies, a new incentive will be introduced. Approved venture capital fund management companies managing s 13H funds will be accorded a concessionary rate of 5% on their specified income. Approval will be granted from 1 April 2015 to 31 March 2020. With the introduction of this new incentive, venture capital fund management will be withdrawn as a prescribed qualifying activity of a pioneer service company from 1 April 2015. Fund management companies managing s 13H funds will not be awarded with a pioneer certificate for venture capital fund management for specified income from 1 April 2015.

GLOBAL TRADING

¶18-750 Approved global trading (GT) company

The Global Trader Programme (GTP) was launched on 1 June 2001, merging the Approved Oil Trader and the Approved International Trader incentive schemes. The GTP is administered by International Enterprise (IE) Singapore. The GT status is normally granted to companies that are well-established international players in their industries with a good track record for international trading, procurement, distribution and transportation of qualifying commodities and products.

Approved GT companies will qualify for a 5% or 10% concessionary rate of tax over a period of five years, with a possible extension for a further five years (s 43P; Income Tax (Concessionary Rate of Tax for Approved Global Trading Companies)

Regulations 2003, S 204/2003). The 10% concessionary tax rate will apply to offshore trading income from the following qualifying commodities and products:

(a) energy commodities and products

(b) agricultural commodities and bulk edible products

(c) building and industrial materials

(d) consumer products

(e) industrial products

(f) machinery components

(g) minerals

(h) electronic and electrical products, and

(i) S$ physical or derivative trades.

The concessionary tax rate of 5% or 10% may be levied upon prescribed income derived by a qualifying company on or after 21 May 2010 from carrying on prescribed qualifying structured commodity financing activities (s 43P(1)(b)). The period for approval is from 21 May 2010 to 20 May 2015.

It was announced in the 2011 Budget that the list of qualifying derivative instruments under the GTP is expanded to include all derivative instruments. This enhancement also applies to income from qualifying trades in new qualifying derivative instruments derived by a GT company from YA 2012.

The GTP scheme has a sunset clause with a deadline of 31 March 2021. No GT company will be granted approved GTP status after 31 March 2021. All existing sunset clauses for previous GTP enhancements will be aligned to 31 March 2021.

Companies can be approved as a GT company or GT (Structured Commodity Finance) company on or before 31 March 2021. A GT company can enjoy the benefits under the various enhancements during its award tenure of up to five years.

E-COMMERCE

¶18-850 Approved cyber trader

The Approved Cyber Trader (ACT) scheme, announced in the 1998 Budget, is meant to encourage foreign and local businesses to hub their electronic commerce (e-commerce) activities in Singapore. The scheme is administered by IE Singapore. The tax relief period is five years.

The ACT scheme provides for the following incentives:

(a) the ACT will be subject to tax at a concessionary tax rate of 10% on incremental income derived from qualifying e-commerce transactions with companies outside Singapore for a period of up to five years (s 43O; Income Tax (Concessionary Rate of Tax for Cyber Trading) Regulations, Rg 33)

(b) the ACT is eligible for investment allowance for approved capital expenditure, and

(c) approved royalties payments to non-residents will be subject to a 10% concessionary WHT.

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The incentive covers the following income:

- trading income done on a principal basis
- commission and brokerage income
- royalty and license payments
- subscription and membership fees, and
- income from pay-per-view service.

To qualify as an ACT, the company must be incorporated in Singapore and must satisfy the following criteria:

- is a well-established player in its business sector or industry
- must trade in products sourced overseas
- must use the internet to conduct its international trading and marketing activities
- must host its website and contents in Singapore
- at least one leg of the transactions must be with non-residents
- the trader's total business spending in Singapore must be at least $1m, and
- must employ three key personnel to be based in Singapore.

The ACT scheme has been withdrawn from 25 February 2013 (announced in the 2013 Budget).

MARITIME SECTOR

¶18-900 Maritime Sector Incentive (MSI)

There are several tax incentives with different incentive tenures and application windows (if any) for ship operators, maritime lessors and providers of certain supporting shipping services. These incentives and their tax benefits are summarised below:

	Incentive	*Tax benefit*
1	Section 13A of the *Income Tax Act*	Tax exemption on qualifying income derived from operating Singapore-flagged and foreign-flagged ships
2	Approved International Shipping Enterprise (AIS) scheme (see ¶18-905)	Tax exemption on qualifying income derived from operating foreign-flagged ships
3	Maritime Finance Incentive (MFI) (see ¶18-910)	Tax exemption or concessionary tax rate of 5% or 10% on qualifying income derived from leasing ships or containers and managing an approved shipping or container investment enterprise
4	Approved Shipping and Logistics (ASL) scheme	10% concessionary tax rate on incremental qualifying income derived by approved ship agencies, ship management companies, freight forwarders and logistics operators
5	Ship Broking and Forward Freight Agreement (FFA) Trading incentive (see ¶18-915)	10% concessionary tax rate on incremental qualifying income derived by approved ship brokers and approved FFA traders

In addition, WHT exemption is granted on a case-by-case basis on qualifying payments made in respect of qualifying foreign loans taken to finance the construction or purchase of ships, subject to conditions.

All tax incentives for the maritime sector have been streamlined and consolidated under the MSI with effect from 1 June 2011 (announced in the 2011 Budget). Existing incentive recipients will transit automatically to the MSI from 1 June 2011. Enhancements have also been introduced under the MSI.

The consolidation aims to simplify and enhance the tax incentives for the maritime sector, and to promote Singapore as an International Maritime Centre.

As announced in the 2012 Budget, the MSI has been further enhanced as follows:

(a) Gains from vessel disposal by qualifying ship operators and ship lessors will be exempt from tax. Previously, qualifying ship operators and ship lessors under MSI awards have to opt for tax exemption on gains from the disposal of vessels. With effect from 1 June 2012, tax exemption will be granted automatically. Gains from the disposal of vessels will be extended to include gains from disposal of vessels under construction and new building contracts, and

(b) With effect from 17 February 2012, payers making payment of time, voyage and bareboat charter fees to non-residents (excluding PEs in Singapore) for the use of ships will be exempted from WHT.

The MSI has three broad categories:

(a) International shipping operations

(b) Maritime (ship or container) leasing, and

(c) Supporting shipping services.

International shipping operations

This category of the MSI aims to attract ship operators to base their operations in Singapore and encourage the registration of ships with the Singapore Registry of Ships. Existing entities enjoying tax benefits under s 13A of the Act and the AIS scheme will transit to this category.

Entities under the international shipping operations category of the MSI will, subject to conditions, enjoy automatic WHT exemption on qualifying payments made in respect of qualifying foreign loans taken to finance the purchase or construction of both Singapore-flagged and foreign-flagged ships, without having to apply for such exemption on a case-by-case basis.

An award with a non-renewable tenure of five years and a sunset clause of 31 May 2016 is introduced for qualifying entry players. Approved entities will be granted similar tax benefits as the AIS scheme.

Maritime (ship or container) leasing

This category aims to promote the growth and development of ship and container financing in Singapore. Existing entities enjoying benefits under the MFI scheme will transit to this category of the MSI and enjoy the same tax benefits. The sunset clause for this category is 31 May 2016.

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Approved ship lessors will, subject to conditions, enjoy automatic WHT exemption on qualifying payments made in respect of qualifying foreign loans taken to finance the purchase or construction of both Singapore-flagged and foreign-flagged ships, without having to apply for such approval on a case-by-case basis.

This category of the MSI is further enhanced in the 2012 Budget. Prior to the enhancement, recipients of the MSI - Maritime Leasing (Container) award may apply for WHT exemption on interest and related payments arising from loans taken to finance qualifying containers on a case-by-case basis. The MSI - Maritime Leasing (Container) award is enhanced as follows:

(a) interest and related payments, made on or after 17 February 2012 arising from loans taken to finance qualifying containers and intermodal equipment will be granted, upon self-assessment of qualifying conditions, automatic WHT exemption

(b) with effect from YA 2013, income derived from the leasing of intermodal equipment (eg trailers) which is incidental to the leasing of qualifying containers will also enjoy the concessionary tax rate of 5% or 10%, and

(c) with effect from YA 2013, qualifying containers will refer to containers that adhere to the standards defined by the International Organisation for Standardisation, Institute of International Container Lessors or any other equivalent organisation.

Supporting shipping services

This category aims to encourage supporting shipping service providers to base their operations in Singapore, and to encourage more shipping conglomerates to conduct their ancillary activities here.

A five-year award will offer a 10% concessionary tax rate on incremental qualifying income derived from the provision of qualifying supporting shipping services including:

(a) Ship management, ship agency and shipping freight/logistic services (previously covered under the ASL scheme)

(b) Ship broking and FFA trading (previously covered under the ship broking and FFA trading incentive), and

(c) Qualifying corporate services.

The sunset clause for this category is 31 May 2016.

2015 Budget announcement

As announced in the 2015 Budget, to further develop Singapore as an International Maritime Centre, tax benefits currently enjoyed by ship operators, maritime lessors and providers of certain shipping-related support services under the MSI will be enhanced as follows:

(a) the automatic WHT exemption regime will be extended to cover finance leases, hire-purchase arrangements and loans used to finance equity injection into wholly-owned SPVs or inter-company loans to wholly-owned SPVs for the purchase or construction of vessels, containers and intermodal equipment by the SPVs

(b) the definition of qualifying ship management activities for the purpose of the MSI-Shipping Enterprise (Singapore Registry of Ships) (MSI-SRS), MSI-Approved International Shipping Enterprise (MSI-AIS) and MSI-Shipping-related Support Services (MSI-SSS) awards will be updated to keep pace with changes in the industry

(c) the MSI-SRS and MSI-AIS awards will include mobilisation fees, demobilisation fees, holding fees and incidental container rental income that are derived in the course of qualifying shipping operations

(d) qualifying profits remitted from approved foreign branches by MSI-AIS entities will be exempted

(e) existing MSI-SSS award recipients can renew their award tenure for a further period of five years subject to qualifying conditions and higher economic commitments, and

(f) the MSI-Maritime Leasing (MSI-ML) award for qualifying income derived from leasing of ships (MSI-ML(Ship)) and qualifying income from leasing of qualifying sea containers and intermodal equipment (MSI-ML(Container)) will be extended to cover income derived from finance leases treated as sale.

These enhancements to the MSI will take effect for existing and new award recipients from 24 February 2015.

The sunset clause for awarding MSI-AIS for qualifying entry players, MSI-SSS, MSI-ML (Ships) and MSI-ML (Container) on 31 May 2016 will be extended till 31 May 2021.

In addition, the automatic WHT exemption regime will be extended to qualifying payments made on qualifying loans taken on or before 31 May 2021.

The MPA will release further details by May 2015.

¶18-905 Approved International Shipping Enterprise scheme

The Approved International Shipping Enterprise (AIS) incentive scheme applies to resident shipping companies which own or operate Singapore ships or foreign ships, and approved ship-leasing companies. The AIS scheme is administered by the Maritime and Port Authority of Singapore (MPA).

To qualify for the AIS scheme, a shipping company must:

- be a Singapore resident company
- be a significant shipowner and fleet operator of foreign ships
- have direct attributable business spending of at least $4m a year in Singapore, and
- have at least 10% of its fleet (or a minimum of one ship) registered in Singapore.

Tax benefit

The following income of an AIS is exempt from tax (s 13F(1)):

- income from the carriage of passengers, mail, livestock or goods from outside Singapore port limits by any foreign ship

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- income from the charter of any foreign ship to a non-resident of Singapore, or to another AIS, for the carriage of passengers, mail, livestock or goods outside Singapore port limits
- income from the carriage of passengers, mail, livestock or goods by a foreign ship to Singapore solely for the purpose of transhipment
- income from the operation or charter of an approved floating production storage offloading ship or an approved floating storage offloading ship (effective from YA 2000)
- income from the towing or salvage operations carried out by any foreign ship outside Singapore port limits (effective from YA 2003)
- income from the charter of any foreign ship to any person for towage and salvage operations conducted outside Singapore port limits (effective from YA 2003)
- income from the operation of any dredger, seismic ship or any vessel used for offshore oil or gas activity outside Singapore port limits (effective from YA 2005)
- income from the charter of any foreign dredger, foreign seismic ship, or any foreign vessel used for offshore oil or gas activity to any person where such dredger, seismic ship, or vessel is used by the person for operations outside Singapore port limits (effective from YA 2005)
- income from foreign exchange and risk management activities which are carried out in connection with and incidental to qualifying activities (effective from YA 2009), and
- income derived on or after 22 February 2010 from the provisions of ship management services to a qualifying SPV in respect of ships owned or operated by the qualifying SPV.

Where a balancing charge arises on the disposal of an approved floating production storage offloading ship or an approved floating storage offloading ship, a portion of the charge computed using a prescribed formula will be exempt from tax (s 10(5)).

The tax exemption is granted for an initial period not exceeding 10 years and may be extended for another 10-year period for a maximum 20-year period of incentive. With effect from 2007, shipping companies may apply for a third AIS incentive period of 10 years, thus enjoying a maximum period of 30 years of the incentive. As announced in the 2013 Budget, shipping companies may apply for a fourth AIS incentive period of 10 years. This means that a shipping company can be granted the MSI-AIS award for a maximum tenure of 40 years subject to conditions. Application is to be made to the MPA.

In determining the amount of income of an AIS, wear and tear allowances are to be taken into account even if no claim has been made by the enterprise. The allowances can be set off against income qualifying for the 10% concessionary tax rate. Any unabsorbed allowances cannot be deducted against other income. However, if at the end of the tax exempt period there are unabsorbed allowances, these allowances can be deducted against other income for the YA relating to the basis period in which the exemption expires and for any subsequent YAs, subject to the usual continuity of shareholders and same trade tests (s 13F(3)).

If an AIS incurs a loss during the tax exempt period, the loss cannot be deducted against other income. However, any loss which remains unabsorbed at the end of the tax exempt period is available for deduction against other income for the YA relating to the basis period in which the exemption ceases, and for any subsequent YAs, subject to the usual continuity of shareholders test (s 13F(4)).

¶18-910 Maritime Finance Incentive

The Maritime Finance Incentive (MFI) scheme came into effect from YA 2007. It is meant to encourage the development of ship financing activities in Singapore. The MFI status is granted from 1 March 2006 to 28 February 2011 for a period not exceeding 10 years. To further support Singapore's development as a maritime financing hub, the expiry date of the MFI has been extended from 28 February 2011 to 31 March 2016. Taxpayers applying for the MFI during the period from 1 March 2011 to 31 March 2016 (both dates inclusive) will be given approval for a period of not more than five years (s 43W(4A)).

Under the scheme:

- tax exemption would apply to the qualifying income from the ship leasing activities of an approved ship investment enterprise (ASIE) (s 13S), and
- a 10% concessionary tax rate would apply to the qualifying management-related income of an approved ship investment manager (ASIM) (s 43W).

The qualifying activities for the ASIE are chartering or finance leasing of:

- ships for use outside Singapore port limits to non-residents of Singapore or an AIS enterprise, or
- Singapore ships for use outside Singapore port limits to a shipping enterprise within the meaning of s 13A (ie any company owning or operating Singapore ships or foreign ships).

The ship must have been acquired during the period of approval of the ASIE.

In the case of an ASIM, the income must be derived from the managing of an ASIE or from prescribed services or activities carried out for an ASIE.

Container leasing activity

The MFI was extended to include container leasing activity and to allow partnerships to enjoy the incentive with effect from 1 April 2008. A container investment enterprise is subject to a concessionary tax rate of either 5% or 10% on its entire onshore and offshore container leasing income, depending on its commitments (s 43ZA). A container investment manager will enjoy a 10% concessionary tax rate on its management fee income (s 43ZB).

Gains from sale of vessels

It was announced in the 2008 Budget that the administrative concession whereby all gains from the sale of vessels are not subject to income tax so long as the vessels are registered with the Singapore Registry of Ships (SRS) or owned by AIS companies will be extended for another five years, from YA 2010 to YA 2014. The concession was extended to include gains from the sale of ships that are subsequently leased back, as well as gains from the sale of shares in a special purpose company which owns ships.

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Forex and risk management gains

Foreign exchange gains and gains from risk management activities that are in connection with, and incidental to, core shipping operations are treated as qualifying income under s 13A of the Act and the AIS Enterprise and the MFI schemes with effect from YA 2009 (s 13A(1B)).

WHT exemption under the Block Transfer Scheme (BTS)

Under the Block Transfer Scheme (BTS), WHT exemption was granted in respect of interest payable on a loan taken by a shipping enterprise from a lender outside Singapore to acquire a ship that was registered with the SRS on any date from 1 November 2003 to 31 December 2008.

The WHT exemption was extended for another five years from 1 January 2009 to 31 December 2013 (both dates inclusive), subject to certain terms and conditions. The WHT exemption applies to interest payable on a loan taken by a shipping enterprise from a lender outside Singapore to acquire a ship that is a new entrant to the SRS and registered with the SRS on any date from 1 January 2009 to 31 December 2013 (both dates inclusive).

From 1 January 2009, the WHT exemption under the BTS also applies to interest payable on a loan taken by a shipping enterprise from a lender outside Singapore to acquire 100% of the shares in a special purpose company owning 100% of a ship that is a new entrant to the SRS and registered with the SRS on any date from 1 January 2009 to 31 December 2013 (both dates inclusive).

¶18-915 Ship brokers and Forward Freight Agreement (FFA) traders

To further promote Singapore as an International Maritime Centre, an incentive was introduced in the 2010 Budget for ship brokers and FFA traders. A company solely carrying out ship broking and/or FFA trading in Singapore will be taxed at a concessionary tax rate of 10% on its income from ship broking and FFA trading which is in excess of its base amount, subject to conditions, for a period of five years. The scheme is administered by the MPA. Approval will be granted from 1 April 2010 up to 31 March 2015 (both dates inclusive). Details on how the base amount is to be determined are provided in s 43ZE.

¶18-920 Ship management services

In line with the objective of developing Singapore into an International Maritime Centre, ship management fees derived on or after 22 February 2010 from the rendering of ship management services to related qualifying SPVs are exempt from tax under s 13A of the Act and the AIS scheme (¶18-900), subject to conditions. Details of the incentive are set out in s 13A(1C).

EVENT ORGANISERS

¶18-950 Event company

Income derived by an approved company from 1 April 2005 from organising or staging approved tourism events will be taxed at the concessionary tax rate of 10% (s 43U). The tourism events must be approved by the Singapore Tourism Board. No approval will be given after 31 March 2010.

Where these companies organise both approved and non-approved events, they will be required to maintain separate accounts for approved events. Where there are common expenses incurred for both approved and non-approved events, they need to apportion common expenses between both events using a reasonable basis of allocation.

HOLDING COMPANIES

¶18-960 Approved holding company

To encourage more multinational companies to locate their holding companies in Singapore, a tax exemption is granted for gains derived by approved holding companies on the disposal of shares in approved subsidiary companies during the five-year period from the date of approval, provided they own at least 50% of the shares for a period of not less than 18 months. This is to provide certainty regarding the tax treatment of gains from the disposal of shares in subsidiaries. To qualify for the incentive, the holding company must be awarded the International Headquarters (IHQ) incentive. This scheme is administered by the Economic Development Board (EDB).

INTERNATIONAL ARBITRATION

¶18-970 International Arbitration Tax Incentive

Under this incentive, approved law firms are granted a 50% income tax exemption on qualifying incremental income (ie the excess of qualifying income over the base income) derived from any international arbitration work where the hearing is held in Singapore (s 13V). The incentive is available from 1 July 2007 to 30 June 2017 and the duration is up to five years. Details on how the base income and qualifying income are to be determined can be found in s 13V(8) to 13V(10). For a law corporation, the partial tax exemption scheme will not apply to the balance of the qualifying income exceeding the base income (s 13V(7)).

NOT-FOR-PROFIT ORGANISATIONS

¶18-980 Tax exemption scheme for not-for-profit organisations (NPOs)

Under this scheme that took effect from 15 February 2007, approved NPOs are granted income tax exemption for an initial period of not more than 10 years (s 13U). The tax exemption may be renewed subject to approval. The incentive is administered by the EDB.

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NPOs do not refer to persons registered or exempt from registration under the *Charities Act (Cap 37, 2007 Revised Ed)*. NPOs are persons who are not established or operated for the object of deriving a profit. The income and property of an NPO can only be applied for the furtherance of its objective and cannot be distributed to any shareholder, member, trustee or officer, except as reasonable compensation for services rendered. The property of an NPO may be distributed to another person established for a similar object as that NPO's upon its dissolution. Eligible NPOs will include those that promote the economic development of Singapore, such as standard-setting organisations and research bodies.

The sunset clause for this scheme is 14 February 2017.

INVESTMENT HOLDING

¶18-985 Family-owned investment holding companies (FIHC)

The FIHC incentive scheme grants tax exemption to eligible FIHCs on relevant Singapore-sourced investment income on or after 1 April 2008 and foreign-sourced income received in Singapore on or after 1 April 2008 (s 13W).

An eligible FIHC means any company incorporated before 1 April 2013 whose shareholders are related to each other and whose operation consists wholly or mainly of the holding or making of investments.

The FIHC incentive scheme expired on 31 March 2013.

BUSINESS TRUSTS

¶18-990 Provision of management services to business trusts

An approved trustee-manager of a qualifying registered business trust or an approved fund management company of a qualifying company will be subject to a concessionary tax rate of 10% on income derived on or after 1 April 2008 from the provision of management services to a qualifying registered business trust or a qualifying company that owns offshore infrastructure assets and is listed on the SGX (s 43ZD). Approval will be granted between 1 April 2008 and 31 March 2017.

CORPORATE AMALGAMATIONS

¶18-995 Tax framework for facilitating corporate amalgamations

A new tax framework for qualifying corporate amalgamations was introduced in the 2009 Budget to provide greater clarity and to minimise the tax consequences arising from amalgamations. This framework was legislated under s 34C and it applies to qualifying amalgamations that take place on or after 22 January 2009. Section 34C provides for the income tax treatment applicable to two or more amalgamating companies and the amalgamated company in a qualifying amalgamation. An election in writing has to be made by the amalgamated company within the stipulated time frame for the new tax framework to apply. Such an election is irrevocable.

A qualifying amalgamation is one in which a notice of amalgamation under s 215F of the *Companies Act (Cap 50, 2006 Revised Ed)* or a certificate of approval under s 14A of the *Banking Act (Cap 19, 2008 Revised Ed)* is issued on or after 22 January 2009.

Under a qualifying amalgamation, the amalgamated company is treated as having carried on the businesses of the amalgamating companies in Singapore from the first day of the amalgamation. The character of any property (ie property on capital account or revenue account) taken over by the amalgamated company from the amalgamating companies will follow the same character as the property of the amalgamating companies.

The IRAS e-Tax Guide "Tax Framework for Corporate Amalgamations (1st Ed)", published on 20 January 2010, provides the tax treatment for specific assets, liabilities and tax items; several illustrative examples on the tax treatment of certain items; and a summary of the GST implications. A specimen application form for election of the new tax framework is also provided.

¶18-996 Merger and acquisition (M&A) allowance and stamp duty remission for qualifying M&A deals

Two initiatives, the M&A allowance and the stamp duty relief, were announced during the 2010 Budget to encourage companies to consider M&As as a strategy for growth and internationalisation.

The M&A allowance will be granted to qualifying M&As executed from 1 April 2010 to 31 March 2015 (both dates inclusive). The M&A allowance is based on 5% of the value of the acquisition, subject to a cap of $5m of allowance granted for all qualifying deals executed per YA. The M&A allowance will be written down equally over a five-year period.

The M&A allowance scheme has been legislated under s 37L "Deduction for acquisition of shares of companies". A qualifying company (ie acquiring company) which has incurred capital expenditure during the period from 1 April 2010 to 1 March 2015 for any qualifying acquisition of ordinary shares in another company (ie target company) is eligible to claim a deduction in accordance with various formulae set out in subsections (8), (9) and (10).

Under the stamp duty relief, stamp duty payable on the transfer of unlisted shares for qualifying M&A deals will be remitted subject to a cap of $200,000 per year. The stamp duty remission applies to qualifying M&As executed from 1 April 2010 to 31 March 2015 (both dates inclusive). Note that there is no stamp duty on the transfer of listed shares as the transfer does not involve a share transfer document and hence does not attract stamp duty.

It was announced in the 2012 Budget that the M&A allowance scheme is enhanced as follows:

- 200% (previously nil) tax allowance is granted on transaction costs incurred on qualifying M&As, subject to an expenditure cap of $100,000 per YA, and the allowance on transaction costs will be written down in one year. Common transaction costs include professional fees on due diligence (accounting and tax), legal fees and valuation fees.

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- the stamp duty relief is extended to M&As completed between 17 February 2012 to 31 March 2015 where:
  - (a) the acquiring company acquires shares of a target company through multiple tiers of wholly-owned subsidiaries, and
  - (b) the qualifying conditions imposed on the target company may be satisfied by any of the multiple tiers of wholly-owned subsidiaries of the target company.
- The EDB is given the discretion to waive the condition that the acquiring company must be held by an ultimate holding company that is incorporated in Singapore and a tax resident of Singapore. Conditions will be imposed on the acquiring company if the discretion to waive is exercised.

Details of the scheme are set out in the IRAS e-Tax Guide "Income Tax and Stamp Duty: Mergers and Acquisitions Scheme (2nd Ed)", published on 16 May 2014.

2015 Budget announcement

As announced in the 2015 Budget, the tax benefits under the M&A scheme will be extended and enhanced to help companies, especially SMEs, to grow via strategic acquisitions as follows:

(a) the scheme will be extended till 31 March 2020

(b) the M&A allowance will be increased to 25%

(c) the cap on the value of qualifying acquisitions for the M&A allowance per YA will be revised to $20m, and

(d) the stamp duty relief on the transfer of unlisted shares will be capped at $40,000 per financial year corresponding to the cap of the value of qualifying M&A acquisitions at $20m.

There is, however, no change to the 200% tax allowance on the transaction costs incurred on qualifying M&As subject to an expenditure cap of $100,000 per YA written down in one year. Transaction costs include professional fees on due diligence, legal fees and valuation fees.

The shareholding eligibility tiers under the M&A scheme will also be revised. The acquiring company must acquire ordinary shares, directly or indirectly, in the target company that will result in the acquiring company holding:

(i) at least 20% ordinary shareholding in the target company (if the acquiring company's original shareholding in the target company was less than 20%) subject to conditions, or

(ii) more than 50% ordinary shareholding in the target company (if the acquiring company's original shareholding in the target company was 50% or less).

Acquisitions of ordinary shares that result in the acquiring company owning at least 75% ordinary shares in the target company (if the acquiring company's original shareholding in the target company was more than 50% but less than 75% at the beginning of the basis period for a YA or financial year) will no longer qualify for the M&A scheme.

Acquiring companies may elect for its ordinary share acquisitions in a target company made during a 12-month period to be consolidated to qualify for the M&A tax benefits. The 12-month period must end on the share acquisition date on which the 50% or 75% shareholding threshold is met or the date of a subsequent acquisition that is conducted within the same basis period. This manner of acquisition of reaching the qualifying shareholding threshold that straddles across two financial years, commonly known as the "12-month look-back period", will be removed to simplify the M&A scheme.

The changes to the M&A scheme will take effect for qualifying acquisitions made from 1 April 2015.

The IRAS will release further details by May 2015, including details of the transitional rules.

¶18-997 Tax deduction for angel investors

The Angel Investors Tax Deduction Scheme was announced in the 2009 Budget to encourage eligible individuals who are able and willing to invest in start-ups and help them grow. The scheme is administered by SPRING Singapore.

An approved angel investor who invests a minimum of $100,000 in a start-up in a YA will be granted a tax deduction of 50% of his investment at the end of a two-year holding period. The tax deduction is subject to a cap of $500,000 of the equity investment in a qualifying start-up per YA. The incentive applies to qualifying investments in qualifying start-ups made during a five-year period from 1 March 2010 to 31 March 2015 (both dates inclusive). Qualifying investment by an approved angel investor will, however, not qualify for tax deduction to the extent that his qualifying investment in the qualifying start-up is matched by the Government.

Details of the scheme are set out in s 37K.

As announced in the 2015 Budget, to continue to encourage angel investors to invest in start-up companies and help such companies grow, the scheme will be extended till 31 March 2020. In addition, to allow more investments to be eligible for tax deduction, new qualifying investments made from 24 February 2015 to 31 March 2020 that are co-funded by the Government will also be allowed to qualify for tax deduction.

AVIATION SECTOR

¶18-998 Aircraft Leasing Scheme

To promote Singapore as a regional aircraft leasing centre for leasing companies to base their aircraft leasing and leasing related activities, the Aircraft Leasing Scheme (ALS) offers a concessionary tax rate of 5% or 10% on qualifying leasing income (s 43Y(1)). Qualifying lease income of an approved aircraft leasing company includes income from onshore leasing, not just offshore aircraft leasing operations, and leasing of aircraft engines. A registered business trust engaged in aircraft or aircraft engine financing arrangements may also apply for the ALS (s 43Y(7)).

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Approval will be granted between 1 March 2007 and 31 March 2017 (s 43Y(4)). Tax at the concessionary tax rate may be granted for a period not exceeding five years. The tax period may be extended for a further period or periods each of which shall not exceed five years (s 43Y(3)).

Recipients granted the ALS award will be granted, subject to conditions, automatic WHT exemptions on interest and qualifying payments made on or after 1 May 2012 in respect of qualifying foreign loans entered into, on or before 31 March 2017.

This scheme is administered by the EDB.

CHAPTER 19

ECONOMIC EXPANSION INCENTIVES

OVERVIEW

¶19-100 Overview

The *Economic Expansion Incentives (Relief from Income Tax) Act (Cap 86, 2005 Revised Ed)* (the "EEIA") contains a range of incentives that are intended to promote Singapore's economic and industrial development. They include:

- pioneer incentives (namely, pioneer industries (¶19-210 to ¶19-250) and pioneer service companies (¶19-300))
- investment allowances (IA) (¶19-410 to ¶19-440)
- development and expansion incentive (DEI) (¶19-500)
- foreign loans for productive equipment (¶19-700)
- royalties, fees and development contributions (¶19-720)
- overseas enterprise incentive (¶19-730)
- enterprise investment incentive (¶19-740), and
- integrated investment allowances (IIA) (¶19-755).

The following incentives have been repealed by the *Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act 2010* and the *Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act 2013*:

- export of services incentive (¶19-600)
- research and development (R&D) and intellectual property (IP) management hub incentive (¶19-760)
- overseas investment incentive (¶19-770), and
- integrated industrial capital allowance (IICA) (¶19-750).

Although the exact details of each incentive vary, some features are common across the incentives. They are therefore set out at the beginning of this chapter. ¶19-800 contains a summary of the incentives under the EEIA.

All references in this chapter are to sections in the EEIA unless otherwise stated.

¶19-110 General conditions for eligibility

The EEIA incentives are generally available only to companies. An exception is the repealed export service incentive, which was available to companies and firms. Qualifying taxpayers must apply for the incentives, and the Minister for Finance (the "Minister") may approve an application if he considers it expedient in the public interest to do so, or if the technology involved would promote Singapore's economic or technological development. Certain conditions for approval may also be set out.

¶19-120 Commencement dates

Most incentives include provisions for a commencement date. A company may apply to have the date amended if, for example, it is unable to satisfy the conditions specified in the certificate for the incentive it enjoys. The Minister has the discretion

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to change the commencement date. Any change of date will have effect as though the new date has been set right from the beginning.

¶19-130 Separate trade

For some incentives, a separate trade (besides the qualifying trade) cannot be carried on without the written approval of the Minister. Where approval has been given, separate accounts must be kept for the separate trade.

¶19-140 Treatment of dividends

With the one-tier corporate tax system fully in place since 1 January 2008, all dividend payments on or after 1 January 2008, including those paid to preference shareholders, are tax exempt in the hands of the shareholders. There is no requirement to distinguish between dividends paid out of taxable income and exempt income.

Historical note

Dividends paid before 1 January 2008

The following paragraphs apply to dividends paid before 1 January 2008. Where companies enjoyed incentives under the EEIA, they would enjoy tax exemption on the whole or a part of their profits. The amount of exempt income derived by an incentive company had to be credited to a special account. If the account was in credit when dividends were paid by the company out of exempt income, an amount equal to the dividends paid or to the credit in the account, whichever was the lesser, would be debited to the account. Generally, the dividends debited to the account were treated as having been distributed in the same proportions as the shareholders' shareholdings in the company.

The dividends paid out of such exempt profits would also be exempt from tax in the hands of the shareholders. Where the shareholder receiving an exempt dividend was a company, it might in turn pay an exempt dividend out of such income to its own shareholders. This was sometimes known as a flow-through exemption. Dividends paid on shares of a preferential nature were, however, not exempt.

¶19-150 Comptroller's powers to recover tax

Another provision that generally applies across the incentives relates to the power of the Comptroller of Income Tax (the "Comptroller") to recover tax on income that was previously declared as exempt. The Minister may revoke a certificate of approval if the company has contravened or failed to comply with any provisions of the EEIA or the regulations (s 99(1)). The Comptroller can also direct that expense or revenue items be apportioned between the tax relief period and the period after the tax relief status has ended, in a manner different from what the company has done. He can at any time within four years (six years for year of assessment (YA) 2007 and before) from the date of revocation or the date of direction, make such additional assessment (whether on the company or on any or all of its shareholders) or direct the company to debit its exempt account with the appropriate amount.

PIONEER INDUSTRIES

¶19-210 General

Eligibility

An industry may qualify as a pioneer industry if the Minister considers that it is not carried on in Singapore on a sufficient scale for Singapore's economic needs, there are favourable prospects for development, and it is expedient in the public interest to do so. This incentive is granted to companies only.

The tax relief period of a pioneer enterprise can be for a period up to 15 years starting from the production day (s 6). Profits derived from a pioneer trade or business during the tax relief period are exempt from tax (s 13). The production day is the day on or before which it is expected that the pioneer enterprise will produce the pioneer product in marketable quantities (s 5(3)(a)).

Pioneer certificate

A pioneer certificate is issued to a company that has been granted pioneer status. The certificate sets out the conditions under which the incentive is granted. These conditions include the rate of production of the pioneer product which it is expected will be achieved on or before the production day (s 5(3)(b)).

In practice, as a condition for approval, all operating expenses incurred before the production day are to be treated as disallowable expenses and would not qualify as business loss to be carried forward.

Accounts

A pioneer enterprise is deemed to have permanently ceased its old trade or business at the end of its tax relief period and to have commenced a new trade or business on the day immediately following the end of its tax relief period (s 7(a) and 7(b)). The first set of accounts of its old trade or business has to be made up for a period of up to one year, beginning on its production day. Subsequent annual accounts are for one-year periods with the final accounts being for a period not exceeding one year, ending on the expiry date of its tax relief period (s 7(c)).

¶19-230 Separate trade and income adjustments

If a pioneer company derives its revenue from the sale of pioneer products which it manufactures in Singapore and also from selling other products (which may or may not be related to the pioneer product), the revenue from the latter trade or business may be considered non-pioneer income. Investment income is also taxable as non-pioneer income at the normal corporate tax rate.

Where a pioneer company carries on a separate (non-pioneer) trade or business, the following rules apply:

(a) Separate accounts must be maintained for the non-pioneer trade or business (s 8(1)). This is to enable the receipts and direct expenses of the two trades or businesses to be recorded accurately for tax purposes. Expenses common to both trades or businesses must be apportioned on some fair and reasonable basis.

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(b) Where there is a loss from a separate non-pioneer trade or business, such loss has to be brought into the computation of the income of the pioneer enterprise unless the Comptroller is satisfied that the loss was not incurred to obtain a tax advantage (s 8(2)). Therefore, a tax loss arising from a non-pioneer trade or business would reduce the pioneer income of the pioneer enterprise unless the taxpayer could show that it did not incur the tax loss to reduce tax.

The Comptroller may consider that a loss was not incurred to gain a tax advantage under the following circumstances:

(i) if the loss was due to depressed sale prices arising from recession, poor market conditions, exceptionally strong competition and sub-standard products

(ii) if the loss was reasonable, direct expenses have been charged to both the pioneer and separate trades, and appropriate and reasonable bases have been used in apportioning indirect expenses between the trades, and

(iii) if the separate trade was already in a loss position before the commencement of the pioneer enterprise.

(See IRAS e-Tax Guide "Pioneer Incentive: Tax Treatment of Gains and Losses from a Separate Trade (2nd Ed)", published on 29 August 2014.)

The onus of proving that a loss was not incurred for a tax advantage is on the pioneer enterprise.

Example 1

	Non-pioneer	*Pioneer*
	$	$
Adjusted profit/(loss)	(1,000)	900,000
Less: s 8(3) abatement	(1,000)	(1,000)
Exempt income	—	899,000

(c) Where the adjusted profit of the separate trade of a pioneer enterprise is less than 5% of the full sum receivable from the sale of goods or the provision of services, the statutory income from the separate trade is deemed to be 5% of the full sum receivable and the pioneer income would be abated accordingly (s 8(3)). The Comptroller may specify a rate less than 5%. In practice, the Economic Development Board (EDB) has been delegated the responsibility for processing applications for a lower percentage. The factors that the EDB would consider include:

(i) the importance of the separate trade to the enterprise

(ii) the turnover of the separate trade

(iii) whether the separate trade is a new or established activity

(iv) past profit margins of the separate trade, and

(v) whether the separate trade's profit margins follow market trends.

Example 2

YA 2015 tax computation

	Non-pioneer	Pioneer
	$	$
Sales	40,000	
Adjusted profit (for example)	1,700	90,000
Add/(less): s 8(4) abatement		
(5% of $40,000 = $2,000)	300	(300)
Deemed profit	2,000	89,700
Less: Capital allowances (CAs) (for example)	(400)	(12,000)
	1,600	
Less: Exempt amount (s 43(6) of the *Income Tax Act*) (75% of $1,600)	(1,200)	
Chargeable income	400	—
Exempt income		77,700

(d) Where a separate trade is, in the Comptroller's opinion, subordinate and incidental to the pioneer trade, the income or loss from the separate trade will be deemed to form part of the pioneer trade (s 8(4)).

¶19-240 Computation of exempt profits

In computing pioneer profits during the tax relief period, the general income tax rules apply after any adjustments that the Comptroller may make (see s 10 and below). An exception is medical expenses, where any excess of the specified percentage of employees' remuneration is deemed profits taxable at the normal corporate tax rate (s 14(6), *Income Tax Act*). Special rules also apply to the unabsorbed losses and unabsorbed CAs that a pioneer company may have when its tax relief period ends (s 15).

Capital allowances

In computing the pioneer profits of a company, it is mandatory to claim land intensification allowances, industrial building allowances and CAs on plant or machinery (s 10(2)). Unabsorbed CAs can be carried forward throughout the tax relief period and if any balance remains at the end of the tax relief period, it can be set off against the income of the company's new trade or business in accordance with the *Income Tax Act (Cap 134, 2014 Revised Ed)* (s 15(2)).

As an exception, CAs will not be deducted when computing the exempt income of a pioneer company if:

(a) the company has incurred, or has undertaken to incur, capital expenditure of not less than $150m

(b) more than 50% of the paid up capital is held by persons permanently resident in Singapore, and

(c) the Minister has approved the capital expenditure as promoting or enhancing Singapore's economic or technological development (s 10(5)).

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Where CAs are not taken into account, the assets acquired by the pioneer company during its tax relief period will be deemed to have been acquired on the day immediately following the day the tax relief period ends (s 10(5)).

Losses

Where a pioneer company incurs losses, such losses can be set off as provided for in s 37(3) of the *Income Tax Act* but only against its pioneer income. However, any losses which remain unabsorbed at the end of the tax relief period can be set off against the profit of the company's new trade or business subject to the substantial shareholdings test (s 15(1)).

Comptroller's adjustments

If any sums payable to a pioneer enterprise in a tax relief period might reasonably and properly have been expected to be payable after the end of the tax relief period, the Comptroller may treat such sums as payable in respect of the new trade or business (s 9(a)). Conversely, if any expenses incurred within one year after the end of the tax relief period might reasonably and properly have been expected to be incurred during the tax relief period, the Comptroller may treat such expenses as having been incurred for the old trade or business (s 9(b)). These provisions are intended to prevent companies from inflating their pioneer profits and reducing their taxable income.

Apportionment of CAs upon expiry of tax relief

If the tax relief period of a pioneer enterprise expires during the basis period of a YA, the allowances for that YA are to be computed as if the old trade or business has not ceased. The amount of allowances computed is to be apportioned in a reasonable manner between the old trade and the new trade (s 10(3)).

The old trade of a pioneer enterprise is the trade that was carried on by a pioneer enterprise before its tax relief period expires. The new trade refers to the trade carried on by the enterprise after its tax relief period expires (s 7(a) and 7(b)).

The CAs should be apportioned as set out below:

(a) Capital expenditure incurred before expiry of tax relief period:

Initial allowances, under s 16 and 19 of the *Income Tax Act*, on capital expenditure incurred before the date of expiry of the tax relief period, are to be allocated to the old trade.

(b) Assets in use at the end of both the tax relief period and the basis period:

Annual allowances for these assets under s 16, 19 and 19A of the *Income Tax Act* are to be apportioned to the old trade and the new trade as follows:

$$\text{Amount to be apportioned to old trade} = \frac{\text{Number of days in the basis period relating to the old trade or business}}{\text{Number of days in the basis period}} \times \text{Annual allowances}$$

$$\text{Amount to be apportioned to new trade} = \frac{\text{Number of days in the basis period relating to the new trade or business}}{\text{Number of days in the basis period}} \times \text{Annual allowances}$$

(c) Capital expenditure incurred after the expiry of the tax relief period:

Initial and annual allowances, under s 16, 19 and 19A of the *Income Tax Act*, on capital expenditure incurred after the expiry of the tax relief period, are to be allocated to the new trade.

(d) Assets disposed of before the expiry of the tax relief period:

Balancing allowances or charges on assets disposed of before the expiry of the tax relief period are to be allocated to the old trade.

(e) Assets disposed of after the expiry of the tax relief period:

Balancing allowances or charges on assets disposed of after the expiry of the tax relief period are to be allocated to the new trade.

(See IRAS e-Tax Guide "Pioneer Incentive: Capital Allowances Upon Expiry of Tax Relief Period (2nd Ed)", published on 29 August 2014.)

Unabsorbed CAs brought forward from the basis period preceding the basis period during which the tax relief expires are to be allocated to the old trade or business of the enterprise.

¶19-250 Other provisions

Recovery of tax

The Comptroller may recover tax if any amount of income of a pioneer enterprise which was exempted from tax is subsequently not exempt because of the Comptroller's adjustments or because the pioneer status was revoked (s 14(7)). The Comptroller may raise an assessment or additional assessment on the pioneer enterprise or any such shareholder to counteract any profit obtained from any such amount. Where there is no fraud, the statutory limitation is four years for YA 2008 and subsequent YAs (s 74(1), *Income Tax Act*). For YA 2007 and before, the time limit was six years. Alternatively, the pioneer enterprise may be required to debit its exempt account with the appropriate amount.

Statement of income

From YA 2009, a statement showing the amount of income in respect of its old trade or business has to be included in any notice of assessment for any YA served on the pioneer enterprise under the *Income Tax Act* (s 12). Subject to s 14(7), where such a statement has become final and conclusive, the amount of the income shown in the statement would not form part of the statutory income of the pioneer enterprise and would be exempt from tax (s 13(1)).

The Comptroller may, before such a statement has become final and conclusive, declare that a specified amount of the income is not in dispute and is exempt from tax (s 13(2)).

PIONEER SERVICE COMPANIES

¶19-300 Pioneer service companies

A company that is engaged in any "qualifying activity" may be approved as a pioneer service company. The income from a qualifying activity of a pioneer service company is tax exempt during its tax relief period. The tax relief period of a pioneer service company can be for five to 15 years (s 16, 17 and 18). The tax relief period begins on the commencement day in respect of the qualifying activity.

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"Qualifying activities" include the following:

(a) engineering and technical services including laboratory, consultancy, and R&D activities
(b) computer-based information and other computer-related services
(c) development or production of any industrial design, and
(d) any other prescribed services or activities (s 16).

Under the Economic Expansion Incentives (Relief from Income Tax) (Qualifying Activity) Regulations, prescribed services and activities are:

(a) services and activities which relate to the provision of entertainment, leisure and recreation
(b) publishing services
(c) services which relate to the provision of education
(d) medical services
(e) services and activities which relate to agricultural technology
(f) services and activities which relate to the provision of automated warehousing facilities
(g) services which relate to the organisation or management of exhibitions and conferences
(h) financial services
(i) business consultancy, management and professional services
(j) services and activities which relate to countertrade including barter, counterpurchase, and compensation or buyback
(k) services and activities which relate to international trade
(l) venture capital fund activity
(m) operation or management of any mass rapid transit system
(n) services provided by an auction house, and
(o) maintaining and operating a private museum.

As announced in the 2015 Budget, venture capital is no longer considered to be a pioneering activity in Singapore and venture capital fund management will be withdrawn as a prescribed qualifying activity of a pioneer service company from 1 April 2015. However, a company already awarded with a pioneer certificate for venture capital fund management will not be affected by this withdrawal.

INVESTMENT ALLOWANCES

¶19-410 General

Eligibility

A company may apply for IA in respect of the fixed capital expenditure for the following projects (s 67(1)):

(a) the manufacture or increased manufacture of any product

(b) the provision of specialised engineering or technical services

(c) R&D

(d) construction operations

(e) reducing the consumption of water

(f) in relation to any qualifying activity as defined in s 16

(g) the promotion of the tourist industry (other than a hotel) in Singapore

(h) the operation of any space satellite

(i) the provision of maintenance, repairs and overhaul services to any aircraft (approval was initially granted for a five-year period from 9 September 2004 to 9 September 2009 and was extended for another five years from 1 April 2010 to 31 March 2015. This scheme is assessed to be no longer relevant and will not be extended after 31 March 2015), and

(j) for improving energy efficiency (approval will be granted during a five-year period from 1 April 2010 to 31 March 2015).

As announced in the 2015 Budget, the IA scheme for energy efficiency projects (IA-EE scheme) will be combined with the IA-EE for Green Data Centres scheme into one scheme known as the "Investment Allowance - Energy Efficiency scheme" from 1 March 2015. The scheme will be extended till 31 March 2021 and will be administered solely by the EDB. The EDB will release further details of the change by March 2015.

Definitions

"Construction operations" include the construction, alteration, repair, extension or demolition of buildings and structures and of any works forming, or to form, part of any land.

A "space satellite" means an apparatus placed in orbit relative to the earth for any economic, scientific or technological purpose.

"Fixed capital expenditure" refers to capital expenditure to be incurred on the following items that are used for carrying out the approved projects (s 66(1)):

(a) factory building (excluding land) in Singapore, including a building or structure specially designed for carrying out the project under s 67(1)(b), 67(1)(c), 67(1)(d), 67(1)(f) or 67(1)(g)

(b) the acquisition of any know-how or patent rights, and

(c) any new productive equipment and any approved second-hand productive equipment to be used in Singapore. In relation to any project for the operation of space satellite and for aircraft maintenance, repairs and overhaul services, fixed capital expenditure would include any approved productive equipment to be used outside Singapore.

Note that from YA 2011, IA will not be granted for any amount of fixed capital expenditure incurred on the acquisition of any productive equipment, know-how or patent rights that qualify for enhanced CAs (s 19A(2A) or 19A(2B), *Income Tax Act*) or enhanced writing-down allowances (s 19B(1A) or 19B(1B), *Income Tax Act*) under the Productivity and Innovation Credit (PIC) scheme (s 74A).

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A company will not be deemed to have incurred fixed capital expenditure unless:

(a) in the case of any factory building or productive equipment to be constructed or installed on site, the expenditure is attributable to payment against work done in the construction of the building or the construction or installation of the productive equipment

(b) in the case of any productive equipment, other than those for a space satellite project or for aircraft maintenance, repairs and overhaul services, the company has received delivery of the equipment in Singapore, and

(c) in the case of any productive equipment for a space satellite project or for aircraft maintenance, repairs and overhaul services, the company has received delivery of the equipment (s 66(2)).

Exclusions

IA may not be given to a company for an approved project if the project gives rise to income which is (s 69(2)):

(a) exempt from tax under the *Income Tax Act* or the EEIA (other than the IA under Pt X), and

(b) taxed at the concessionary rate of tax under the post-pioneer and the DEI.

In any event, a company that has incurred, on or after 1 January 1996, fixed capital expenditure for an approved project for reducing water consumption may be granted an IA (s 69(6)). In such instance, the allowance is to be credited to the normal IA account and is allowed to be set off against the company's chargeable income taxed at the normal tax rate.

Tax relief

Under the IA scheme, a company is granted an IA based on an approved percentage of the fixed capital expenditure incurred on plant, machinery and factory building for an approved project. The percentage will not exceed 100% (s 68(1)). The fixed capital expenditure must be incurred within the qualifying period of up to five years to be eligible for IA. Where the specified item is acquired under a hire-purchase agreement made on or after 15 February 2007, the qualifying period is extended up to eight years. The qualifying period begins on the "investment day", the date from which the company qualifies for the IA (s 66(1)).

The IA is to be set off against chargeable income derived from that project and is given in addition to the normal CAs. Unlike unabsorbed CAs, unutilised IA can be carried forward indefinitely for set-off against the chargeable income in future years. The substantial shareholders' and the "same trade" tests do not apply.

Certificate for IA

The approval for IA is given in a certificate issued by the EDB. This certificate gives full details of the company, the project, the product and the conditions for approval. Some of the conditions relate to the investment day, the qualifying period, the specified percentage and the qualifying fixed capital expenditure.

¶19-420 Crediting of IAs

IAs which have been set off against chargeable income are required to be credited to separate IA accounts according to the tax rates applicable to the income arising from the approved projects.

- *Normal and concessionary IA accounts*

  Where an IA is given for an approved project from which only normal income is derived, the IA is required to be credited to an account called a "normal investment allowance account" (NIAA) (s 69(3)). Where an IA is given for an approved project from which concessionary income is derived, the IA is required to be credited to an account called a "concessionary investment allowance account" (CIAA) (s 69(4)). "Normal income" means income subject to tax at the normal rate of tax. "Concessionary income" means income which is subject to tax at a concessionary rate of tax under certain provisions of the Act (s 66(1)).

  Where a company derives both normal and concessionary income from a project, the Minister or a person whom he appoints will decide on which account the IA is to be wholly credited (s 69(5)).

- *Change from normal income to concessionary income*

  Notwithstanding s 71, as from the relevant date, where the income derived from an approved project is subject to tax as concessionary income instead of normal income, the following applies:

  (a) Subject to para (d), any balance in the NIAA will only be used for deduction against the company's chargeable normal income for the transitional year.

  (b) Any IA in respect of fixed capital expenditure incurred before the date of change will be credited to the NIAA.

  (c) Any IA in respect of fixed capital expenditure incurred on or after the date of change will be credited to the CIAA.

  (d) The NIAA for the transitional year will be debited with the amount of chargeable normal income for the transitional year not exceeding the credit in the NIAA; and any remaining balance in the NIAA will be transferred to the CIAA for use against the chargeable concessionary income of the company for the transitional year and future YAs (s 69(7)).

- *Change from concessionary income to normal income*

  Notwithstanding s 71, as from the relevant date, where the income of a company which is derived from an approved project is subject to tax as normal income instead of as concessionary income, the following applies:

  (a) Subject to para (d), any balance in the CIAA at the end of the basis period for the YA before the transitional year will only be used for deduction against the company's chargeable concessionary income for the transitional year.

  (b) Any IA in respect of fixed capital expenditure incurred before the date of change will be credited to the CIAA.

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(c) Any IA in respect of fixed capital expenditure incurred on or after the date of change will be credited to the NIAA.

(d) The CIAA for the transitional year shall be debited with the amount of chargeable concessionary income for the transitional year not exceeding the credit in the CIAA; and any remaining balance in the CIAA will be transferred to the NIAA for use against chargeable normal income of the company for the transitional year and future YAs (s 69(8)).

The "relevant date" is the date in the basis period relating to any transitional year on which the income of an approved project is subject to tax as concessionary income instead of as normal income, or vice versa. The "transitional year" is the YA relating to the basis period in which the income of any approved project is from the relevant date subject to tax as concessionary income instead of as normal income, or vice versa.

- *Where company permanently ceases to derive concessionary income*

  Notwithstanding s 71(4), where the Comptroller is satisfied that a company has ceased to derive any concessionary income in the basis period for any YA:

  (a) the CIAA will be debited with the amount of chargeable concessionary income of the company for that YA not exceeding the credit in that account

  (b) any remaining balance in the CIAA will be debited from that account, and

  (c) an adjusted amount of any remaining balance referred to in para (b) will be credited to the NIAA for use against the chargeable normal income of the company for that YA and subsequent YAs (s 69(9)).

¶19-430 Exemptions

Where for any YA, an NIAA of a company is in credit and the company has for that YA any chargeable normal income:

(a) an amount of the chargeable normal income, not exceeding the credit in the NIAA, will be exempt and the NIAA will be debited with such amount, and

(b) any remaining balance in the NIAA will be carried forward for set-off against the chargeable normal income in future YAs (s 71(1)).

Chapter 19

However, a company may elect in any YA to set off any outstanding allowances in the NIAA against the chargeable concessionary income. The election has to be made when an income return is lodged (s 71(2) and 71(3)).

Where, for any YA, a CIAA of a company is in credit and the company has for that YA any chargeable concessionary income:

(a) an amount of the chargeable concessionary income, not exceeding the credit in the CIAA, will be exempt and the CIAA will be debited with such amount, and

(b) any remaining balance in the CIAA will be carried forward for set-off against the chargeable concessionary income in future YAs (s 71(4)).

Any amount of chargeable normal income of a company debited from the NIAA or any amount of chargeable concessionary income of a company debited from the CIAA is exempt from tax (s 71(5)).

¶19-440 Prohibitions on sale, lease or disposal of assets

During its qualifying period or within two years after the end of its qualifying period, a company is not permitted to sell, lease or otherwise dispose of any asset which has qualified for IA without the written approval of the Minister (s 70(1)). Otherwise, the total amount of the IA given for that asset may be recovered from the company by deducting the amounts which have previously been credited to the NIAA or CIAA. If the amount in the relevant account is not sufficient to give full effect to the recovery, an assessment or additional assessment may be raised on the company or any of its shareholders to recover the amount. The Minister may, however, waive wholly or partly the recovery of the IA (s 70(2) and 70(3)).

DEVELOPMENT AND EXPANSION INCENTIVE

¶19-500 Development and expansion incentive

The DEI applies not only to companies which have previously enjoyed pioneer status but also to companies which have not.

Any company engaged in a "qualifying activity" may be approved as a "development and expansion company" (s 19J(1)). A "qualifying activity" means any of the following:

- the manufacturing or increased manufacturing of any product from any industry that would be of economic benefit to Singapore
- any qualifying activity as defined in s 16 (see ¶19-300 above), or
- other services or activities as may be prescribed (s 19I).

Prescribed services and activities are those relating to ship management, ship agency, logistics and freight forwarding. The DEI scheme has been extended to cover income derived from the provision of international legal services from 1 April 2010 to 31 March 2015 (both dates inclusive) (s 19KA). This is to encourage law practices to do more international legal work. The incentive is available to law practices registered in Singapore as a company or as a branch of a foreign company. Approved law practices will be subject to tax at a concessionary rate of 10% on "expansion income" from qualifying international legal services for a non-extendable period of five years. As announced in the 2015 Budget, the DEI scheme for international legal services will be extended till 31 March 2020.

A company which qualifies for the DEI is taxed at a reduced rate of not less than 5% on "expansion income" derived by it during its tax relief period from the qualifying activities. The initial tax relief period may be granted for a period not exceeding 10 years. The tax relief period may be extended for up to five years at a time, subject to a maximum total period of 20 years (s 19K). For a DEI company, which engages in one or more qualifying activities and oversees, manages or controls the conduct of any activity on a regional or global basis, when applying for an extension of the tax relief

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period between 18 February 2008 and 17 February 2018 (both dates inclusive), the tax relief period may be extended for a period not exceeding 10 years at any one time, but the total relief period shall not exceed in the aggregate 40 years (19K(3A) to 19K(3D)). On extension of the tax relief period from the 11^{th}, 16^{th}, 21^{st} or 31^{st} year, the reduced rate shall not be less than (0.5 + A)%, where A is the concessionary rate of tax applicable to the company's expansion income that is derived by it immediately before the commencement of the 11^{th}, 16^{th}, 21^{st} or 31^{st} year (s 19J(5A)).

The "expansion income" of a development and expansion company is the income from the qualifying activities which exceeds its "average corresponding income". The company's "average corresponding income" is determined by taking 1/3 of the total of the corresponding income from such qualifying activities for the three years immediately preceding the commencement day. The Minister may specify the amount of the "average corresponding income" (s 19J(6) to 19J(8)).

EXPORT OF SERVICES INCENTIVE

¶19-600 Export of services

Note that the export of services incentive has been repealed by the *Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act 2010*, which came into operation on 14 January 2011.

A company or firm which is engaged in any qualifying service may be approved as an export service company or export service firm (s 44B(1) (repealed)). The initial tax relief period of an export service company or firm begins on the commencement day and continues for a period not exceeding 10 years. The tax relief period may be extended for further periods, not exceeding five years at any one time, but the total period may not exceed 20 years (s 44C (repealed)).

"Qualifying services" mean any of the following services undertaken with respect to overseas projects for persons who are neither residents of, nor permanent establishments (PEs) in, Singapore (s 44A (repealed)):

(a) technical services, including construction, distribution, design and engineering services

(b) consultancy, management, supervisory or advisory services relating to any technical matter or to any trade or business

(c) fabrication of machinery and equipment and procurement of materials, components and equipment

(d) data processing, programming, computer software development, telecommunications and other computer services

(e) professional services including accounting, legal, medical and architectural services

(f) educational and training services, and

(g) other prescribed services.

Computation of profits

The income of an export service company or firm in respect of its qualifying services is computed as follows (s 44E(1) (repealed)):

(a) Income from sources other than the qualifying services is to be excluded and separately assessed.

(b) In computing the income derived from the qualifying services, the following is deducted:

  (i) all direct costs and expenses incurred in respect of the qualifying services, and

  (ii) all indirect expenses which are reasonably and properly attributable to the qualifying services.

(c) CAs which are attributable to income derived from the qualifying services during the tax relief period are mandatory.

(d) For the purposes of para (b)(ii) and (c), the amounts attributable to the qualifying services will be determined on a basis that the Comptroller thinks reasonable and proper.

The excess of the income ascertained under s 44E(1) (repealed), over a base amount of income to be determined by the Minister, will qualify for tax relief (s 44E(2) (repealed)). Subject to the Comptroller's powers of recovery of tax, 90% of the amount of the qualifying income will be exempt from tax.

Example 3

A company was granted an export service certificate. The tax relief period began on 1 January 2008. The base export profit level for its overseas profit was $40,000. CAs for YA 2010 are $36,000. Other details for the year ended 31 December 2009 are given below.

	$
Gross revenue	
– Local services	900,000
– Qualifying export services	300,000
Adjusted profits before CAs	1,100,000

The exempt income and chargeable income are determined as follows:

Calculation of exempt income

	$
Adjusted qualifying profits (3/12 × $1,100,000)	275,000
Less: Attributable CAs (3/12 × $36,000)	(9,000)
	266,000
Less: Base amount	(40,000)
Adjusted qualifying income	226,000
Exempt income = 90% thereof	203,400

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Tax computation for YA 2010

			$
Adjusted profits			1,100,000
Less: CAs			(36,000)
			1,064,000
Less: Exempt income (as above)			(203,400)
			860,600
Less: Exempt amount:			
		$	
75% of first $10,000		7,500	
50% of next $290,000		145,000	(152,500)
Chargeable income			708,100
Tax @ 17%			120,377

OTHER INCENTIVES

¶19-700 Foreign loans for productive equipment

Where a company engaged in any industry wants to raise a loan from a non-resident person for the purchase of productive equipment for its trade or business, it may apply for that loan to be an approved foreign loan. The loan must be for a minimum amount of $200,000, but the Minister may accept a smaller amount (s 57(1) and 57(2)).

Under the approved foreign loan incentive, the loan interest is either exempt or taxable at a reduced rate. The borrower will therefore not need to withhold any tax or will only need to withhold tax at a lower rate (s 59(1)).

The productive equipment purchased with the loan cannot be sold, transferred, or otherwise disposed of without the Minister's approval, unless the loan has been fully repaid (s 58). If the company contravenes s 58 or any of the conditions imposed for the approval of the foreign loan, the tax which would have been required to be withheld by the company from the interest it paid to the foreign lender will be recoverable from the company (s 59(2)).

As announced in the 2015 Budget, to ensure that the relevance of the incentive is reviewed periodically, a review date of 31 December 2023 will be legislated for this incentive. In addition, the minimum loan quantum will be raised from $200,000 to $20m from 24 February 2015. The Minister may approve an application of a loan for less than the minimum loan quantum of $20m.

¶19-720 Royalties, fees and development contributions

A company engaged in any industry which wants to enter into an agreement or arrangement with a non-resident person, under which royalties or technical assistance fees or contributions to R&D costs are payable to the non-resident person, may apply for those payments to be approved royalties, fees or contributions (s 61).

The term "royalties or technical assistance fees" includes any royalties, rentals or any other consideration for the right to use copyrights, scientific works, patents, designs, plans, secret processes, formulae, trademarks, licenses or any other property of a similar nature (s 3). Fees paid to an individual for professional services rendered in Singapore are excluded.

Approved royalties, fees and development contributions are either exempt from tax or taxable at a reduced rate. Where the tax payable on approved royalties, fees or contributions is at a reduced rate and the Comptroller is satisfied that the payments have either wholly or partly been expended in the acquisition of ordinary share capital in the company from which these payments were received, the amount of income expended will be exempt (s 65). Where any approved royalties, fees or contributions payable by the company cease to be payable before the period of agreement expires, the company is required to notify the Minister within 30 days from the date they cease to be payable (s 62(1)).

A company that has been granted the incentive may not amend or otherwise vary the terms of the agreement unless the Minister approves. However, if the consideration remains the same and the change relates only to reduced amounts of royalties, fees or contributions payable, the company need only to notify the Minister within 30 days from the date on which the amount is reduced (s 62(2)). If a company contravenes s 62(2) or any condition set for the approval, the withholding tax that would have been payable if no relief had been granted will be recoverable from the company (s 64(2)).

As announced in the 2015 Budget, to ensure that the relevance of the incentive is reviewed periodically, a review date of 31 December 2023 will be legislated for this incentive.

¶19-730 Overseas Enterprise Incentive

Note that the Overseas Enterprise Incentive has been withdrawn with effect from 25 February 2013. With broad-based changes to the domestic regime for foreign-sourced income, this incentive is no longer relevant.

Any company incorporated and resident in Singapore which desires to expand its business by investing in an overseas company or carrying out any qualifying activity may apply to be approved as an overseas enterprise (s 97I(1)).

"Qualifying activity" means any of the following activities in an overseas project:

(a) manufacturing activities or services
(b) infrastructure development and management
(c) tourism development and management
(d) technical services including construction, distribution, design and engineering services
(e) consultancy, management, supervisory or advisory services relating to any technical matter or to any trade or business
(f) fabrication of machinery and equipment and procurement of materials, components and equipment
(g) data processing, programming, computer software development, telecommunications and other computer services

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(h) professional services including accounting, legal, medical and architectural services

(i) educational and training services, and

(j) any other prescribed activities or services.

"Qualifying income" means:

(a) dividends received from any qualifying investment, specified in the certificate of approval under s 97I(2), in any overseas company to the extent that the Comptroller is satisfied that such dividends are paid out of income of the overseas company derived from any qualifying activity, and

(b) income derived from Singapore or received in Singapore from outside Singapore from any qualifying activity.

An "overseas enterprise" must be a company at least 50% of whose paid-up capital is beneficially owned by citizens or permanent residents of Singapore:

(a) throughout the period during which it holds shares in an overseas company (in the case of dividends received from qualifying investments in that overseas company), or

(b) throughout the period during which it carries on any qualifying activity (in the case of income derived from that qualifying activity),

unless the Minister otherwise decides.

An overseas enterprise may be exempt from tax on its "qualifying income" for a total period of up to 10 years, beginning on the commencement day (s 97J).

Computation of qualifying income

Qualifying income and other income are to be assessed separately (s 97M(a)). The Comptroller may adjust income and expenses to prevent manipulation of accounts (s 97L). The qualifying income is determined based on the general income tax rules. In particular, the following amounts are to be deducted in calculating the qualifying income:

(a) all direct costs and expenses incurred in respect of that qualifying income

(b) all indirect costs and expenses which are reasonably and properly attributable to that qualifying income

(c) allowable donations, and

(d) CAs attributable to the qualifying income (mandatory).

During the tax relief period, any loss from the qualifying activity, any unabsorbed CAs and unabsorbed donations can be carried forward for set-off against future qualifying income only and may not be transferred to another company in the same group under the group relief rules. At the expiry of the tax relief period, any unabsorbed losses and allowances will be available for set off against other income subject to the substantial shareholdings tests (s 97M(d), 97M(f) to 97M(h)).

Indirect expenses and CAs are to be allocated to the qualifying income on a reasonable and proper basis (s 97M(e)).

¶19-740 Enterprise Investment Incentive

This incentive is intended to facilitate Singapore companies engaged in innovative and high growth activities with substantial developmental contents relating to any product, process or service to gain access to venture capital. An investor who holds qualifying shares in a start-up company may qualify for a deduction for any loss incurred from the sale of qualifying shares in, or from the liquidation of, the start-up company (s 97V(1)).

A company incorporated in Singapore and not listed on the Singapore Exchange (SGX) or an overseas stock exchange may apply for approval as a start-up company if it:

- has a paid-up capital of at least $10,000, and
- is solely or primarily engaged in Singapore in innovative and high growth activities with substantial developmental contents in relation to any product, process or service (s 97T(1)).

The Minister may approve the application and award the company the start-up company status for a period of up to five years if he is satisfied that the activities of the company are in an area of high growth potential and would enhance the economic development of Singapore. No approval will be given on or after 1 September 2009 (s 97T(2) and 97T(3)).

An eligible investor in a start-up company may qualify for a deduction for any loss incurred under s 97V(1) against its statutory income as if the loss were its trade or business loss. To be qualifying shares for this purpose, the following conditions apply:

- the shares are not shares of a preferential nature
- the purchase price of the shares allotted to the investor is not less than $1,000 at any one time
- the shares are not acquired under a share option or share award scheme
- the shares are not acquired through a conversion of any loan or debt securities
- the shares are paid for in cash, and
- at the time the shares are allotted to the investor, the total amount paid to the company for all qualifying shares by all eligible investors has not in the aggregate exceeded $3m (s 97U).

A deduction will be denied if:

- the shares in respect of which the loss was incurred were held by an eligible investor for a period of less than one year from the date of allotment of the shares, unless the loss arose as a result of the liquidation of the start-up company, or
- the sale of the shares or liquidation occurred after six years from the date of allotment of the shares (s 97V(2)).

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Where an eligible investor makes a gain from the sale of any qualifying shares in, or from the liquidation of, a start-up company and where any loss in relation to that start-up company has previously been allowed as a deduction to the eligible investor under s 97V, the gain will be deemed to be income of the eligible investor insofar as it is not taxable as a revenue or trading receipt (s 97V(3)). However:

- no gain is deemed to be income unless the total amount of losses allowed for previous YAs exceeds the total amount of the gains deemed to be income for previous YAs
- the amount of the gain chargeable to tax must not exceed the excess of the total amount of losses allowed for previous YAs over the total amount of gains deemed to be income for previous YAs, and
- the losses and gains referred to in s 97V(2)(a) and 97V(2)(b) shall be disregarded (s 97V(4)).

The loss (gain) on disposal of the qualifying shares in a start-up company is determined to be the excess (deficit) of the purchase price of the qualifying shares over the greater of:

- the sale proceeds, or
- the value of the net asset backing of the start-up company as determined by the Comptroller at the date of sale of such shares.

In the case of the liquidation of a start-up company, the loss (gain) is the excess (deficit) of the purchase price of the qualifying shares over the liquidation proceeds (s 97V(5) and 97V(6)).

¶19-750 Integrated industrial capital allowances

Note that the IICA incentive has been withdrawn following the introduction of the IIA scheme on 17 February 2012. The changes have been effected by the *Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act 2013*.

Where a company incorporated and resident in Singapore proposes to carry out a project through any overseas subsidiary for the manufacture or increased manufacture of any product, or for the provision of specialised engineering or technical services, it may apply to the Minister for the approval of an IICA in respect of the fixed capital expenditure for the project. The Minister may grant approval if he considers it expedient, having regard to the economic, technical and other merits of the project (the old s 97ZB).

The incentive, if granted, will be for a period not exceeding five years. No approval for the IICA incentive will be granted to any company from 1 March 2013 (the old s 97ZB(5)).

Fixed capital expenditure of an approved IICA does not qualify for enhanced allowance under the PIC scheme.

Definitions

An "overseas subsidiary" means a company:

(a) which is incorporated outside Singapore

(b) whose principal activity is solely or primarily to carry out any approved project outside Singapore, and

(c) in respect of which all (or such other percentage as the Minister may determine) of its paid-up capital is beneficially owned throughout the qualifying period by a company qualifying for the IICA in respect of the approved project (the old s 97ZA).

"Fixed capital expenditure" means capital expenditure (including capital expenditure on alteration to any building incidental to the installation of any productive equipment) to be incurred by a company on or after 1 March 2003 on any new productive equipment and, subject to the Minister's approval, any second-hand equipment (but excludes equipment sold and repurchased by the company), to be provided to and used by an overseas subsidiary of the company for an approved project.

Order of set-off and conditions for carry forward

The company can claim IICA in respect of the fixed capital expenditure incurred within the qualifying period only for the YA relating to the basis period during which the qualifying period ends. The IICA can be deducted only against the following income (and not against any other income) in the following order (the old s 97ZC):

(a) firstly, against the income derived from the carrying on of an approved project subject to tax as concessionary income

(b) secondly, against the income derived from the carrying on of an approved project subject to tax as normal income, and

(c) lastly, against the income received in Singapore from the provision of the productive equipment to the overseas subsidiary.

The set-off order and the carry forward of the IICA are governed by s 22A and 23 of the *Income Tax Act* (the old s 97ZC(4)).

Cessation of approved project

Notwithstanding s 97ZC(3), where a company ceases permanently to carry on an approved project through the overseas subsidiary, any unabsorbed IICA will be deductible against any other income of the company for the YA that relates to the basis period in which the project permanently ceases and any subsequent YA in accordance with s 23 of the *Income Tax Act* (the old s 97ZC(5)). Any unabsorbed IICA is not available for transfer by the company under the group relief rules (the old s 97ZC(8)).

During its qualifying period, a company is not allowed to sell, lease out or dispose of productive equipment in respect of which IICA has been allowed, unless it has the Minister's written approval. A company that does so without approval is deemed to have derived an amount of income for that YA (that relates to the basis period in which the sale, lease or disposal takes place) equal to the deduction made under s 97ZC as if the IICA were not made (the old s 97ZD). The Comptroller can recover tax if a deduction under s 97ZC ought not to have been made owing to a revocation of the letter of approval (the old s 97ZE).

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¶19-755 Integrated investment allowance

The IIA scheme was introduced in the 2012 Budget. A company may apply for IIA in respect of the fixed capital expenditure for an approved project (s 97ZB(1)). An approved project is one where a Singapore company proposes to carry out a project under which a project company outside Singapore will be:

(a) manufacturing or increasing the manufacture of products of the Singapore company, or

(b) providing specialised engineering or technical services on behalf of or to the Singapore company.

Approval will be granted for projects from 17 February 2012 to 28 February 2017 (both dates inclusive).

Definitions

"Fixed capital expenditure" refers to capital expenditure to be incurred on qualifying equipment to be used for the carrying out of the approved project (s 97ZA) and includes capital expenditure on alterations to any building incidental to the installation of the qualifying equipment.

"Qualifying equipment" means any new productive equipment or any second hand productive equipment (but does not include productive equipment sold and repurchased by the Singapore company) used solely by the project company outside Singapore to manufacture products for, or provide specialised engineering or technical services to, the Singapore company.

Exclusions

IIA may not be granted to a Singapore company for qualifying equipment if (s 97ZC(2)):

(a) the expenditure is not attributable to payment against work done on-site in the construction or installation of the qualifying equipment or the project company outside Singapore has not received delivery of the qualifying equipment

(b) allowance has been claimed under s 19A(2A) or 19A(2B) of the *Income Tax Act* in respect of the fixed capital expenditure, and

(c) investment allowance has been claimed under Pt X in respect of the fixed capital expenditure.

IIA may also not ordinarily be granted to a Singapore company for an approved project if the project gives rise to income which is (s 97ZC(3)):

(a) exempt from tax under the *Income Tax Act* or the EEIA (other than the IIA under Pt XIIID), and

(b) taxed at the concessionary rate of tax under the post-pioneer and the DEI.

Tax relief

Under the IIA scheme, a Singapore company is granted an IIA based on an approved percentage of the fixed capital expenditure incurred on qualifying equipment for that approved project. The fixed capital expenditure will not exceed the lower of the fixed capital expenditure incurred on all qualifying equipment for that approved project or the sum (if specified) in the approval letter for that approved project. The fixed capital expenditure for the qualifying equipment must be incurred within the qualifying period, which will be specified in the approval letter. The maximum qualifying period to incur the fixed capital expenditure is five years but qualifying equipment acquired under a hire-purchase agreement will have a maximum qualifying period of eight years. The qualifying period begins on the investment day, the date from which the Singapore company must incur the fixed capital expenditure in respect of the qualifying equipment (s 97ZB(4)).

Certificate for IIA

The amount of fixed capital expenditure qualifying for IIA for an approved project will be given in an approval letter issued by the EDB. The approval letter will also include other information, including the investment day and the conditions for granting IIA.

Crediting of IIA

IIA is required to be credited to separate IIA accounts according to the tax rates applicable to the income arising from the approved projects.

- *Normal and concessionary IIA accounts*

  Where an IIA is given for an approved project from which only normal income is derived, the IIA is required to be credited to an account called a "normal IIA account" (s 97ZD(1)). Where an IIA is given for an approved project from which concessionary income is derived, the IIA is required to be credited to an account called a "concessionary IIA account" (s 97ZD(2)). "Normal income" means income subject to tax at the normal rate of tax. "Concessionary income" refers to income that is subject to tax at a concessionary rate of tax under certain provisions of the Act (s 97ZA).

  Where a Singapore company derives both normal and concessionary income from an approved project, the Minister or a person whom he appoints will decide on which account the IIA is to be wholly credited (s 97ZD(3)).

- *Change from normal income to concessionary income*

  Notwithstanding s 97ZE, as from the relevant date, where the income derived from an approved project is subject to tax as concessionary income instead of normal income, the following applies:

  (a) Subject to para (d), any balance in the normal IIA account will only be used for deduction against the Singapore company's net chargeable normal income for the transitional year.

  (b) Any IIA in respect of fixed capital expenditure incurred before the date of change will be credited to the normal IIA account.

  (c) Any IIA in respect of fixed capital expenditure incurred on or after the date of change will be credited to the concessionary IIA account.

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(d) The normal IIA account for the transitional year will be debited with the amount of net chargeable normal income for the transitional year not exceeding the credit in the normal IIA account and any remaining balance in the normal IIA account will be transferred to the concessionary IIA account for use against the net chargeable concessionary income of the Singapore company for the transitional year and future YAs (s 97ZF).

- *Change from concessionary income to normal income*

Notwithstanding s 97ZE, as from the relevant date, where the income of a Singapore company which is derived from an approved project is subject to tax as normal income instead of concessionary income, the following applies:

(a) Subject to para (d), any balance in the concessionary IIA account at the end of the basis period for the YA before the transitional year will only be used for deduction against the Singapore company's net chargeable concessionary income for the transitional year.

(b) Any IIA in respect of fixed capital expenditure incurred before the date of change will be credited to the concessionary IIA account.

(c) Any IIA in respect of fixed capital expenditure incurred after the date of the change will be credited to the normal IIA account.

(d) The concessionary IIA account for the transitional year shall be debited with the amount of net chargeable concessionary income for the transitional year not exceeding the credit in the concessionary IIA account; and any remaining balance in the concessionary IIA account will be transferred to the normal IIA account for use against the net chargeable normal income of the Singapore company for the transitional year and future YAs (s 97ZG).

The "relevant date" is the date in the basis period relating to any transitional year in which the income of an approved project is subject to tax as concessionary income instead of normal income, or vice versa. The "transitional year" is the YA relating to the basis period in which the income of any approved project is from the relevant date subject to tax as concessionary income instead of normal income, or vice versa.

- *Where company permanently ceases to derive concessionary income*

Where the Comptroller is satisfied that a Singapore company has ceased to derive any concessionary income in the basis period for any YA:

(a) the concessionary IIA account will be debited with the amount of net chargeable concessionary income of the Singapore company for that YA not exceeding the credit in that account

(b) any remaining balance in the concessionary IIA account will be debited from that account, and

(c) an adjusted amount of any remaining balance referred to in para (b) will be credited to the normal IIA account for use against the net chargeable normal income of the Singapore company for that YA and subsequent YAs (s 97ZE(5)).

Exemptions

Where for any YA, the normal IIA account of a Singapore company is in credit and the Singapore company has for that YA any net chargeable normal income:

(a) an amount of the net chargeable normal income, not exceeding the credit in the normal IIA account, will be exempt from tax and the normal IIA account will be debited with such amount, and

(b) any remaining balance in the normal IIA account will be carried forward for set-off against the net chargeable normal income in future YAs (s 97ZE(1)).

A Singapore company, however, may elect in any YA to set off any outstanding allowances in the normal IIA account against the net chargeable concessionary income. The election has to be made when an income return is lodged for that YA (s 97ZE(2) and 97ZE(3)).

Where, for any YA, the concessionary IIA account of a Singapore company is in credit and the company has for that YA any net chargeable concessionary income:

(a) an amount of the net chargeable concessionary income, not exceeding the credit in the concessionary IIA account, will be exempt from tax and the concessionary IIA account will be debited with such amount, and

(b) any remaining balance in the concessionary IIA account will be carried forward for set-off against the net chargeable concessionary income in future YAs (s 97ZE(4)).

Any amount of net chargeable normal income of a Singapore company debited from the normal IIA account is exempt from tax (s 97ZF(6)). Any amount of net chargeable concessionary income of a Singapore company debited from the concessionary IIA account is exempt from tax (s 97ZE(7)).

Prohibitions on sale, lease or disposal of assets

During the qualifying period or within two years after the end of the qualifying period, a Singapore company is not permitted to sell, lease (except to the project company outside Singapore) or otherwise dispose of any qualifying equipment which an IIA has been granted without the written approval of the Minister (s 97ZH(1)). Otherwise, the total amount of the IIA given for the qualifying equipment may be recovered from the Singapore company by deducting the amounts which have previously been credited to the normal IIA account or concessionary IIA account. If the amount in the relevant account is not sufficient to give full effect to the recovery, an assessment or additional assessment may be raised on the Singapore company to recover the amount (s 97ZH(2)). The Minister may, however, waive wholly or partly the recovery of the IIA (s 97ZH(3)).

¶19-760 R&D and IP management hub incentive

Note that the R&D and IP management hub incentive has been repealed by the *Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act 2010*, which came into operation on 14 January 2011.

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Any company that is desirous of undertaking any R&D project in Singapore or elsewhere may apply to the Minister to be approved for the tax exemption on any remitted income during its tax relief period (s 97ZG(1) (repealed)). No approval for this incentive will be granted after 31 May 2008 (s 97ZG(3) (repealed)).

The Minister may grant approval and issue a letter of approval to the company if all the following conditions are met:

(a) the whole amount of any remitted income is used by the company by the end of the fifth basis period commencing from the year of receipt of the remitted income on any R&D project undertaken by it in Singapore or elsewhere

(b) at least 20% of any remitted income is used by the company by the end of the fifth basis period commencing from the year of receipt of the remitted income on any R&D project undertaken by it in Singapore

(c) any R&D project undertaken by the company in Singapore on which any remitted income is used is not one that is approved under s 14E of the *Income Tax Act*

(d) any IP right resulting from any R&D project undertaken by the company on which any remitted income is used is owned and commercialised by the company, and

(e) such other conditions as the Minister may impose (s 97ZG(2) (repealed)).

Definitions

"Remitted income" means the total amount of relevant foreign income received in Singapore in any basis period by an approved company.

"Relevant foreign income" means any royalty or interest derived by the company from any territory outside Singapore where the payment of the royalty or interest is not borne by, directly or indirectly, or deductible against any income of, a person resident in Singapore or a PE in Singapore (except in respect of any business carried on outside Singapore through a PE outside Singapore) (s 97ZF (repealed)).

Tax relief period

Any remitted income received by an approved company during its tax relief period is tax exempt. The tax relief period is:

(a) where the company receives any remitted income in the approval year, five consecutive basis periods commencing from the approval year, or

(b) where the company does not receive any remitted income in the approval year, five consecutive basis periods commencing from the basis period immediately after the approval year.

Recovery of tax

The Comptroller can recover the tax if the approved company breaches any one or more of the conditions in s 97ZG(2) (repealed) in respect of any remitted income. Section 97ZJ (repealed) has detailed rules for such recovery.

¶19-770 Overseas Investment Incentive

Note that the Overseas Investment Incentive has been repealed by the *Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act 2010*, which came into operation on 14 January 2011.

Any company that is incorporated and resident in Singapore and that is desirous of investing in an overseas company on or after 1 January 2004 for the purpose of acquiring for use in Singapore any technology from the overseas company or for the purpose of gaining any access to any new overseas market may apply to be approved as an eligible holding company (s 97ZL (repealed)).

The Minister may approve the applicant company as an eligible holding company and issue a letter of approval to the company subject to such terms and conditions that he may impose, and designate the overseas company as an eligible investee company for a period of three years from the date of commencement stated in the letter of approval. This incentive is no longer granted.

Where an eligible holding company is liable to pay any tax on its chargeable income for any qualifying YA and where the eligible investee company incurs any qualifying loss from the carrying on of any trade or business during the accounting period that ends on the same date or a date no earlier than one year from the end of the relevant accounting period of the eligible holding company to which that qualifying YA relates, the payment of a specified amount of the tax for that qualifying YA by the eligible holding company shall be deferred (s 97ZM(1) (repealed)).

With the introduction of the carry-back regime under s 37E of the *Income Tax Act*, the term "chargeable income", in relation to an eligible holding company, has been re-defined to mean the income of the company chargeable to tax after deducting:

(a) expenses, allowances, losses, donations, any qualifying deductions available for transfer under s 37C of that Act (group relief) and any qualifying deduction claimed under s 37E of that Act (carry-back), and

(b) allowances and losses allowable under the EEIA.

The specified amount of tax the payment of which may be deferred for any qualifying YA by an eligible holding company is ascertained based on the formula in s 97ZM(2) (repealed). The amount of qualifying loss of an eligible investee company for any accounting period is the lowest of three amounts set out in s 97ZN(1) (repealed), and it is to be certified by the company's external auditor unless the Minister otherwise directs (s 97ZN(2) (repealed)).

¶19-800 Summary of incentives under the EEIA

Refer to the table on the following page.

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Type	Requirements	Incentives	Relief period
• Pioneer Enterprise (Pt II)	Industry is not being carried on in Singapore on a scale adequate to Singapore's economic needs and in the Minister's opinion, there are favourable prospects for development.	Tax exemption on qualifying profits	5 to 15 years
• Pioneer Service Companies (Pt III)	Companies engaged in qualifying activities which include: (i) any engineering or technical services including laboratory, consultancy and R&D activities (ii) computer-based information and other computer-related services (iii) development or production of any industrial design (iv) trading in art and antiques by auction houses and operation of a private museum, and (v) such other services or activities as may be prescribed.	Tax exemption on qualifying profits	5 to 15 years
• Investment Allowances (IA) (Pt X)	(i) Companies proposing to carry out a project for, among others: (a) manufacturing and service activities (b) R&D activities (c) construction operations (d) reducing consumption of water, or (e) projects for the promotion of the tourist industry (other than a hotel) in Singapore (f) operation of any space satellite, or	Tax exemption on chargeable income equal to approved percentage not exceeding 100% of the capital expenditure incurred on: (a) plant and machinery (b) factory building, or (c) acquisition of know-how or patent rights	Unutilised IA may be carried forward for set-off against chargeable income

Chapter 19

Type	Requirements	Incentives	Relief period
	(g) projects for the maintenance, repairs and overhaul services to aircraft (the scheme will cease after 31 March 2015). (ii) Investment must be made within the stipulated qualifying period which would exceed 5 years from investment day (or 10 years, in the case of a project for the promotion of the tourist industry (other than a hotel) in Singapore). (iii) There is no minimum investment requirement. (iv) The asset for which the incentive has been granted cannot be sold, leased or otherwise disposed of within the qualifying period and 2 years thereafter, without the Minister's approval.		
• Development and Expansion Incentive (DEI) (Pt IIIB)	Companies engaged in qualifying activities which include: (i) manufacturing or increased manufacturing in an industry of economic benefit to Singapore (ii) engineering and technical services including laboratory, consultancy and R&D activities (iii) computer-based information and other computer-related services (iv) development or production of any industrial design, and (v) other prescribed services or activities.	Tax rate as low as 5%	10 years with provision for extension (maximum tax relief period is 40 years)

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Type	Requirements	Incentives	Relief period
• Approved Foreign Loans (Pt VIII)	(i) Loan must be of a minimum amount of $20m ($200,000 on or before 23 February 2015) (the Minister may waive this requirement) and the credit facilities are granted for the purchase of productive equipment. (ii) Applicant must be a company and the lender is a non-resident person.	Exemption or reduction of withholding tax on interest payable on the loan	Duration of the loan, which may be extended with the Minister's approval
• Royalties, Fees and Development Contributions (Pt IX)	Applicant must be a company and the recipient is a non-resident person.	Exemption from or reduced withholding tax	For the duration of the agreement
• Overseas Enterprise (Pt XIIIB) (Withdrawn with effect from 25 February 2013)	(i) Companies which invest in approved overseas investments and projects. (ii) Investor companies must be: (a) incorporated and resident in Singapore for tax purposes (b) at least 50% of its paid-up capital is beneficially owned by Singapore citizens or permanent residents.	Tax exemption on: (a) qualifying income, and (b) domestic income from approved investments and approved overseas projects	Up to 10 years
• Enterprise Investment Incentive (Pt XIIIC)	Investment by an investor holding qualifying shares in a start-up company. A start-up company (to be approved by the Minister) must: (i) be incorporated in Singapore and not listed on the SGX or an overseas stock exchange (ii) have a paid-up capital of at least $10,000, and	Loss incurred from sale of shares or liquidation of the start-up company can be set off against the investor's other taxable income	As and when losses are incurred but with time restrictions

Type	Requirements	Incentives	Relief period
	(iii) be solely or primarily engaged in Singapore in innovative and high growth activities with substantial developmental contents in relation to any product, process or service. Qualifying shares in a start-up company are: (i) not shares of a preferential nature (ii) shares which the purchase price allotted to the investor is not less than $1,000 at any one time (iii) shares which are not acquired under a share option or share award scheme (iv) shares which are not acquired through a conversion of any loan or debt securities (v) shares which are paid for in cash, and (vi) where at the time the shares are allotted to the investor, the total amount paid to the company for all the qualifying shares by all the eligible investors has not in the aggregate exceeded $3m.		
• Integrated investment allowance (IIA) (Pt XIIID) (For approved projects from 17 February 2012 to 28 February 2017)	A company in Singapore incurring fixed capital expenditure on qualifying equipment for a project company outside Singapore to manufacture or increase the manufacture of any product for, or to provide specialised engineering or technical services on behalf of, or to, the company in Singapore.	Tax exemption equal to the percentage of fixed capital expenditure incurred on all qualifying equipment as specified in the approval letter for the approved project.	5 years for qualifying equipment 8 years for qualifying equipment acquired under a hire-purchase agreement.
• Integrated industrial capital allowance (IICA) (the old Pt XIIID) (Withdrawn with effect from 17 February 2012)	Where a company incorporated and resident in Singapore proposes to carry out a project through any overseas subsidiary for the manufacture or increased manufacture of any product, or for the provision of specialised engineering or technical services, it may apply for IICA in respect of the fixed capital expenditure for the project.	Upon approval, the Singapore company can claim IICA (s 19 or 19A of the *Income Tax Act*) on the assets in respect of which the IICA is granted even though the assets are to be provided to and used by the overseas subsidiary of the company for the approved project.	5 years (maximum)

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Type	Requirements	Incentives	Relief period
	An "overseas subsidiary" means a company: (a) which is incorporated outside Singapore (b) whose principal activity is solely or primarily to carry out any approved project outside Singapore, and (c) in respect of which all (or such other percentage as the Minister may determine) of its paid-up capital is beneficially owned throughout the qualifying period by a company qualifying for the IICA in respect of the approved project (the old s 97ZA).	IICA can be deducted against certain income in a specified order only, unless the approved project permanently ceases, in which case the unabsorbed amount can be carried forward subject to the usual rules in s 23 of the *Income Tax Act*.	
• Export of Services (Pt VIA) (repealed)	(i) The applicant must be a company or firm that is engaged in providing services which include: (a) technical services (b) consultancy, management or advisory (c) fabrication of machinery and equipment (d) data processing, programming, computer software development, telecommunications (e) professional services such as accounting, legal, medical, and architectural (f) education and training services, and (g) other prescribed services. (ii) The services must be undertaken with respect to overseas projects for persons who are neither residents of, nor PEs in, Singapore.	Up to 2.45% tax on qualifying export income (from YA 2002)	10 years with provision for extension

Type	Requirements	Incentives	Relief period
• Research and Development and Intellectual Property Management Hub (Pt XIIIE) (repealed)	Any company that is desirous of undertaking any R&D project in Singapore or elsewhere may apply for the tax exemption on any remitted income during its tax relief period.	Approved company is tax exempt on remittances of foreign royalty or interest income to Singapore, subject to conditions.	5 years (maximum)
• Overseas Investment Incentive (Pt XIIIF) (repealed)	Any company that is incorporated and resident in Singapore and that is desirous of investing in an overseas company on or after 1 January 2004 for the purpose of acquiring for use in Singapore any technology from the overseas company or for the purpose of gaining any access to any new overseas market may apply to be approved as an eligible holding company. If approval is granted, the overseas company will be an "eligible investee company".	Eligible holding company will qualify for deferral of payment of a specified amount of tax if it is liable to pay any tax for any qualifying YA and the eligible investee company incurs a "qualifying loss".	3 years

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CHAPTER 20

TAX AVOIDANCE AND EVASION

¶20-000 Introduction

Tax is a cost to all taxpayers. The total burden of income tax is dependent essentially on two factors — the amount of income that is subject to tax and the rates of tax that apply to the income. Taxpayers generally have no control over the rates of tax. However, if taxpayers carefully plan their income-earning activities, they can minimise their tax liabilities by reducing the amount of income subject to tax thereby maximising their after-tax income.

Tax planning is essentially an arrangement of a person's business and/or private affairs so as to achieve the lowest tax payable. Where tax planning is aimed at reducing or avoiding tax using means which are within the legal framework of the law, it is legitimate. However, tax planning or tax avoidance can come within the ambit of the tax avoidance provision (s 33 of the *Income Tax Act (Cap 134, 2014 Revised Ed)* (the "Act")) if the arrangements are artificial and contrived, and designed to secure a tax advantage. If s 33 is read literally, any arrangement to alter, reduce or avoid tax would come within the scope of the anti-tax avoidance provision. However, the Inland Revenue Authority of Singapore (IRAS) has stressed that the aim of the anti-avoidance provision is to reduce blatant or contrived tax avoidance arrangements and it is not intended to affect normal commercial transactions which result in tax savings. The Court of Appeal has also provided guidance in the interpretation and application of s 33 in *CIT v AQQ and another appeal* [2014] SGCA 15.

¶20-100 Tax evasion

Tax evasion is different from tax avoidance. Tax evasion is distinguished from tax avoidance by the element of illegality. "Evasion" has been defined as the "action of evading or escaping as by artifice or contrivance, escape, dodging, prevarication, shuffling, excuse or subterfuge" (*Shorter Oxford English Dictionary*). Tax evasion occurs when a taxpayer does not pay his proper and lawful share of taxes through illegitimate ways of reducing income. Such a taxpayer abuses the law by knowingly concealing or understating his income.

Tax evasion is the commission or omission of an act with the intent to deceive. Such acts would include failure to report income, making a false claim for deduction of expenses, falsification of returns and accounts, or entering into sham transactions. Evasion of tax is illegal and is a criminal offence. The Act provides penalties for any person who wilfully evades tax or assists another to evade tax.

Singapore draws a distinction between fraudulent tax evasion (s 96) and serious fraudulent tax evasion (s 96A) and provides for different penalties. Penalties are also provided under both sections for any person who wilfully evades tax or assists another person to evade tax.

Under s 96, the penalties for wilful omission of income, making a false statement or entry in any return, or giving a false answer, verbal or oral, to any question or request for information are as follows:

(a) a penalty of 300% of the amount of tax undercharged

(b) a fine not exceeding $10,000, and/or

(c) imprisonment of up to three years.

Section 96A provides heavier penalties for the following which are considered as serious fraudulent tax evasion (these were previously included as part of s 96 before the 2003 amendment):

(a) preparing, maintaining, authorising the preparation or maintenance of any false books of accounts or records, falsifying or authorising the falsification of any books of accounts or records, and

(b) making use of any fraud, art or contrivance or authorising the use of any such fraud, art or contrivance.

The s 96A penalties are as follows:

(a) a penalty of 400% of the amount of tax undercharged

(b) a fine not exceeding $50,000, and/or

(c) imprisonment of up to five years.

TAX AVOIDANCE

¶20-200 Tax avoidance

"Avoidance" has been defined as the action of avoiding anything that is unwelcome (*Shorter Oxford English Dictionary*). Tax avoidance or the reduction of tax is justifiable as long as the tax laws are not violated and transactions are *bona fide*. In the United Kingdom (UK), the courts have clearly supported the rights of a taxpayer to pay only that amount of tax which the taxpayer is obliged to (*Latilla v IR Commrs* (1943) 1 All ER 265; *Levene v IR Commrs* (1928) 13 TC 486; *CIR v Duke of Westminster* (1936) AC 1; *Ayrshire Pullman Motor Services & DM Ritchie v IR Commrs* (1929) 14 TC 754).

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In Singapore, there are provisions in the Act which may render certain tax avoidance schemes ineffective. Section 33 is the general anti-avoidance provision. The specific anti-avoidance provisions are listed in ¶20-220.

¶20-210 General anti-avoidance provision

In 1988, Singapore repealed its general anti-avoidance s 33 and replaced it with the current s 33. The law came into effect on 29 January 1988. It grants extensive powers to the Comptroller of Income Tax (the "Comptroller"), giving him the discretion to challenge any transaction which reduces or avoids tax liability.

Arrangements to which s 33 applies

The section applies to all "arrangements" which directly or indirectly:

- alter the incidence of any tax which is payable by or which would otherwise have been payable by any person
- relieve any person from any liability to pay tax or to file a Singapore tax return, or
- reduce or avoid any liability imposed or which would otherwise have been imposed on any person (s 33(1)).

An arrangement is defined as a scheme, trust, grant, covenant, agreement, disposition, transaction and includes all steps which carry the arrangement into effect (s 33(2)).

Comptroller's powers

To counteract any tax advantage obtained or obtainable by a person from or under the arrangement, the Comptroller is empowered to make whatever adjustments he considers appropriate in the circumstances. The Comptroller may:

- disregard the arrangement, or
- vary the arrangement, and
- make adjustments which he considers appropriate, including the computation or re-computation of gains or profits, or the imposition of liability to tax (s 33(1)).

Arrangements to which s 33 does not apply

Section 33 does not apply to any arrangement which is carried out for *bona fide* commercial reasons and has not as one of the main purposes the avoidance or reduction of tax. Note that there is no penalty imposed under s 33.

The Comptroller has stated that the main aim of the section is to ensnare blatant cases of tax avoidance and not to penalise legitimate tax planning. He has given assurance that the provisions will not apply to *bona fide* transactions even if these result in incidental tax savings and that his decisions would not be based on a narrow reading of the legislation.

Tests used by the Comptroller to determine if arrangements are caught under s 33

In deciding whether an arrangement is caught by s 33, the Comptroller would consider, among other things:

- whether artificiality is present
- whether various intermediaries or transactions have been interposed to reduce or avoid tax, and
- whether transfer pricing has occurred.

The primary test is whether there is commercial justification for the transaction.

The Comptroller has stated that the legislation will not introduce a tax liability where none already exists. Examples of transactions which will not be caught by s 33 are:

- unremitted foreign income from deposits with an offshore bank (interest which would be taxable if it arose from an onshore bank deposit with a commercial bank in Singapore)
- an employee who is provided with housing accommodation instead of being given a housing allowance
- individuals and companies granted tax exemptions and concessions under the incentive schemes, and
- pioneer companies which have incurred losses or low profits in their non-pioneer activities may set up separate companies for these activities to avoid being caught under s 8(3) of the *Economic Expansion Incentives (Relief from Income Tax) Act (Cap 86, 2005 Revised Ed)* which specifies that if the profit of the separate trade (non-pioneer activity) is less than 5% of the full sum receivable from the non-pioneer activity, that profit will be deemed to be 5% of the full sum so receivable and the pioneer income will be abated accordingly.

Meaning of "artificial"

Artificiality is one of the factors that will determine if a taxpayer is caught by s 33. The question of whether a transaction is artificial is not to be judged by the fiscal result or even the ultra fiscal object so long as it can be said to be a commercial transaction. However, where a transaction is inspired by fiscal considerations and is so shaped that its character no longer retains the nature of a trading transaction, it can be said to be artificial. Such a transaction takes the shape of an arrangement or a scheme which cannot be fairly regarded as being a transaction in the relevant trade.

Some factors that need to be considered when imputing an artificial transaction are:

- What was the motive behind the transaction?
- Was the transaction in the ordinary course of the trade or business, ie was the purchase or sale made in "what is truly the carrying on" of the business of the taxpayer?
- Was the transaction merely one to secure a tax advantage?
- Was the buyer in effectual and constant control of the seller?
- Was the loss incurred in the course of the trade of the taxpayer?
- Did the purchaser have any options in the transaction contemplated?

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There are several Singapore and Malaysian cases on artificial transactions. Four of the more important cases are summarised below:

CIT v AB Estates Ltd

In the Malaysian case *CIT v AB Estates Ltd* (1950–1985) MSTC 95; (1967) 1 MLJ 89, the taxpayer company acquired a rubber estate and leased it to a subsidiary for a sum far below the fair rental at that time. The Federal Court held that the lease was not a transaction in the ordinary course of business and consequently the transaction was artificial. The transaction had not been motivated by economic consideration and was thus unnatural and artificial.

Director-General of Inland Revenue v LD Timber Sendirian Berhad

In *Director-General of Inland Revenue v LD Timber Sendirian Berhad* (1978) 1 MLJ 203, the taxpayer signed two agreements on the same day: one for timber extraction and the other for the sale of timber and the execution of certain works on the same day. The intention was to separate the income derived from the extraction of timber from the income from the sale of timber with the result that the company would escape liability for timber profit tax on the income derived from the sale of the timber but not on the timber extraction fees.

The Malaysian court applied the test in *Newton v FC of T* (1963) 109 CLR 9; (1956–1958) 7 AITR 1, ie if the transactions are capable of explanation by reference to ordinary business or family dealing, without necessarily being labelled as a means to avoid tax, then the arrangement is not caught by the tax-avoidance section. It was found that the arrangement adopted by the company had been an ordinary business dealing.

Appeal No 4 of 1970

In the Singapore High Court case *Appeal No 4 of 1970*, the taxpayer company was engaged in developing land. A plot of land was purchased by the taxpayer company and later sold to a company, which had been formed by the managing director of the taxpayer. The managing director paid for the plot with money loaned to him by the taxpayer company. The instructions for the sale and purchase of the plot had been given by the managing director in his capacity as managing director of both companies. The transaction between the taxpayer company and the managing director's company was disregarded as artificial and the taxpayer was assessed on the full profits arising from the transactions.

AQQ v CIT

In the Singapore case *AQQ v CIT* (2011) MSTC ¶50-002; [2011] SGITBR 1, the Board of Review had to decide if the Comptroller was correct in applying s 33 to a financing arrangement.

Until 2003, Singapore had an imputation system for dividends declared by a Singapore resident company, which means that the income tax paid at the corporate level will be given as a credit to the shareholders. Consequently, although dividends are taxable in the hands of shareholders, the tax paid at the corporate level will be given as a credit against the tax payable by the shareholders, resulting in the dividends being effectively taxed at the marginal tax rates of the shareholders.

However, where a shareholder's marginal tax rate is below the corporate tax rate or if no tax is payable by the shareholder, any excess tax paid at the corporate level will be refunded to the shareholder.

The imputation system was replaced by the one-tier corporate tax system with effect from 1 January 2003 and a five-year transitional period was provided from 1 January 2003 to 31 December 2007 to allow Singapore resident companies to utilise all their tax credits as at 31 December 2002.

In *AQQ*, the Board had to examine the rationale and the execution of a financing arrangement to determine if the financing arrangement would be caught by s 33. The financing arrangement was part of an exercise to reorganise the corporate structure of a group of companies in Singapore according to its various lines of businesses and in line with the group's operational structure in Malaysia. Essentially, the appellant, which was incorporated on 31 May 2003 and was the holding company of the group, would receive imputation dividends from its subsidiaries. These subsidiaries did not opt to move to the one-tier corporate tax system and chose to remain under the imputation system. Consequently, the dividends paid by these subsidiaries to the appellant carried tax credits pursuant to the imputation system. The appellant paid interests as part of the financing arrangement with N Singapore and claimed interest deduction against the imputation dividends. This resulted in a refund being made to the appellant by the Comptroller.

Following further queries, the Comptroller informed the appellant that he was not satisfied that the there were commercial justifications for the financing arrangement with N Singapore but that the financing arrangement was entered into for the main purpose of deriving a tax advantage. Accordingly, the Comptroller invoked s 33 and revised his earlier assessments for three years of assessment (YAs) by raising additional assessments. As a result, the appellant was liable to repay the tax refund and the appellant appealed to the Board.

The Board examined the circumstances surrounding the financing arrangement and the manner various transactions in the financing arrangement were conducted. The Board found that:

- There was no documentation and contemporaneous evidence showing that the group had always intended to restructure the holding of the group of companies in Singapore.
- A large loan transaction which formed part of the entire financing arrangement had no real commercial justification. There were no records of discussions detailing the merits of the loan apart from an undated discussion paper from N Singapore indicating that the purpose of the financing arrangement was to obtain or extract tax benefits.
- The discussion paper from N Singapore did not explain how the operations of the group could be streamlined by having the reorganisation. All the entities involved in the financing arrangement (except for N Singapore) were related parties and ultimately owned by the same entity. In economic terms, the Board viewed them as the same enterprise under the same control and direction.

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- Where shares were involved in the financial arrangement, no valuation of the shares was carried out to determine the prices of the shares.
- With the exception of one transaction in the financing arrangement, all transactions took place on the same day.
- The role of N Singapore was merely facilitative in the financing arrangement. It did not really act as a lender of funds and did not therefore bear any risk as a lender. N Singapore did not derive any real interest income because there was no true lending made by N Singapore to the group. The "interest" earned by N Singapore would be returned to the group of companies in Singapore in the form of conditional payments. The payment for the involvement of N Singapore for participating in the arrangement was in the form of the fee for structuring and for making the arrangement.
- The involvement of an entity, N Mauritius, in the financing arrangement had no real commercial necessity other than to take advantage of the withholding tax exemption.

The Board concluded that the financing arrangement with N Singapore was contrived and artificial or was constructed in a contrived and artificial way in order for the appellant to obtain a refund of tax. The financing arrangement with N Singapore had the purpose or effect of tax avoidance falling within s 33. The arrangement was not carried out for *bona fide* commercial reasons but had as one of its main purposes the avoidance or reduction of tax. Based on the facts, the Board dismissed the appellant's appeal, noting that whether an arrangement could be considered to be contrived and artificial is essentially a question of fact. The factual matrix of each case is important.

AQQ appealed to the High Court against the decision of the Board.

The High Court, in *AQQ v CIT* (2012) MSTC ¶70-017; [2013] 1 SLR 1361, held that the proper approach to s 33 should be as follows:

- The Comptroller must first determine whether the arrangement in question falls within any of the three limbs in s 33(1).
- If the arrangement does not fall within any of the three limbs in s 33(1), the Comptroller cannot exercise his powers thereunder.
- If the arrangement falls within any of the three limbs in s 33(1), it must further be determined whether either of the two statutory exceptions in s 33(3) applies to the arrangement in question.
- If either of the statutory exceptions applies to the arrangement in question, the Comptroller may not exercise his powers under s 33(1).
- Conversely, if neither of the statutory exceptions applies, the Comptroller may exercise his powers under s 33(1).

It would appear that in *AQQ*, the Board adopted the wrong approach by asking whether the financing arrangement was artificial and contrived before considering whether any of the three limbs in s 33(1) was satisfied. It would be relevant to consider whether the financing arrangement in question was artificial or contrived but only at the second stage when the question was whether the statutory exception in s 33(3)(b) should apply to the financing arrangement.

The High Court further held that before the Comptroller may exercise his powers under s 33(1), the Comptroller must be satisfied that the purpose or effect of the financing arrangement in question is one or more of the consequences set out in the sub-paras of s 33(1) by examining the terms of the arrangement and the manner in which it is implemented without reference to the motives of the parties involved.

The High Court was of the view that the Comptroller was not wrong in determining that the financing arrangement in *AQQ* fell within s 33(1). Although there was no dispute that the restructuring was done for *bona fide* commercial reasons, the evidence did not prove that the financing arrangement was done for *bona fide* commercial reasons. The High Court upheld the Board's finding that the financing arrangement was not carried out for *bona fide* commercial reasons and that it had as one of its main purposes the avoidance or reduction of tax, with the result that the statutory exception under s 33(3)(b) would not be applicable.

Notwithstanding that the financing arrangement was not carried out for *bona fide* commercial reasons and that it had as one of its main purposes the avoidance or reduction of tax (and s 33(3)(b) therefore did not apply to prevent the exercise of the Comptroller's power under s 33(1)), the High Court went further to express the view that the Comptroller should not have disregarded the interest expenses but should have required the appellant to account the withholding tax on interest payments borne by the appellant arising from the financing arrangement. The Comptroller did not exercise his powers under s 33(1) fairly and reasonably when he disregarded both the dividend income and the interest expenses and exercised his discretion to issue additional assessments under s 74(1). The Comptroller should not have disregarded the appellant's dividend income because the appellant was entitled to the dividend income and the Comptroller should not have disregarded all the interest expenses but only two-thirds of the total interest expenses that should not be attributed to the appellant. The High Court accepted the appellant's argument that the additional assessments raised by the Comptroller were *ultra vires* and void. For these reasons, the appellant's appeal was allowed by the High Court.

The parties cross appealed against the decision of the High Court to the Court of Appeal.

The Comptroller appealed against the decision of the High Court that he had not acted reasonably and fairly in exercising his powers under s 33(1); AQQ appealed against the decision of the High Court that the financing arrangement amounted to a tax avoidance arrangement within the meaning of s 33(1).

The Court of Appeal dismissed AQQ's appeal and allowed the Comptroller's appeal to the extent that the Comptroller had validly issued the Notice of Assessment for YA 2007. The Court of Appeal held that the additional assessments for YA 2004, YA 2005 and YA 2006 were *ultra vires* and affirmed the order of the High Court to set these aside.

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The Court of Appeal dealt with five broad issues arising from these appeals in *CIT v AQQ and another appeal* [2014] SGCA 15 as follows:

(a) On the first issue whether any of the threshold limbs in s 33(1) was satisfied on the facts of the case, the Court of Appeal held that the composite scheme of corporate structuring and financing arrangement was an arrangement that fell within the ambit of s 33(1)(c).

(b) On the second issue whether AQQ could rely on the exception in s 33(3)(b), the Court of Appeal held that AQQ was unable to avail itself of the exception under s 33(3)(b) because on the facts, there was no basis to disturb the conclusion of the High Court that AQQ's subjective purpose and object of the arrangement was to reduce or avoid liability that would otherwise have accrued on the dividend income.

(c) On the third issue whether AQQ was entitled to rely on the specific provisions of the Act to preclude the operation of s 33 if s 33(1) was *prima facie* applicable, the Court of Appeal opined that the New Zealand scheme and purpose approach ought to be adopted with respect to the interpretation of s 33 as follows:

   - consider whether an arrangement *prima facie* falls within any of the three threshold limbs of s 33(1) such that the taxpayer has derived a tax advantage, and if so
   - consider whether the taxpayer may avail himself of the statutory exception under s 33(3)(b), and
   - ascertain whether the taxpayer has satisfied the court that the tax advantage obtained arose from the use of a specific provision in the Act that was within the intended scope and Parliament's contemplation and purpose, both as a matter of legal form and economic reality within the context of the entire arrangement.

   The Court of Appeal held that the scheme and purpose approach did not apply to remove the arrangement from the scope of s 33(1). AQQ could not rely on the combination of specific provisions of the Act as entitling it to the tax advantage it had obtained, ie the deduction of interest expenses from the dividend income. The real issue was the deduction of the interest expenses under s 14(1)(a)(i) to reduce the amount of chargeable income and the Court of Appeal opined that formal and mechanistic compliance with the letter of s 14(1)(a)(i) was insufficient. On the facts of the case, the interest expenses did not incur any real economic costs within the group of companies and deduction of such interest expenses would not be within Parliament's contemplation and purpose.

(d) On the fourth issue whether the Comptroller had exercised his powers under s 33(1) fairly and reasonably to counteract the tax advantage obtained, the Court of Appeal opined that s 33 does not mandate the Comptroller to adopt a particular mode of exercising his powers as long as the object of counteracting the tax advantage is attained, but the Court of Appeal affirmed that the Comptroller has to exercise his powers in a manner that is "fair and reasonable". On the facts of the case, the Comptroller was entitled to choose to disregard the arrangement and treat the arrangement as null and void.

(e) On the fifth issue whether the Comptroller had acted *ultra vires* s 74(1) by issuing the additional assessments, reference was made to the wording in s 74 that "any person liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the Comptroller may, . . . assess that person at such amount or additional amount as according to his judgment ought to have been charged". Since the word "assess" refers to the determination of the amount of liability to tax under the Act and an additional assessment should relate to an additional amount that ought to have been chargeable to tax so as to supplement the shortfall from the original assessment, the Court of Appeal held that the Comptroller does not have the implied power under s 74 to assess for tax a sum that had previously been refunded or repaid to a taxpayer.

The IRAS' position

The IRAS' letter dated 20 January 1988 to the Registrar of the then Singapore Society of Accountants (now the Institute of Singapore Chartered Accountants, previously also known as the Institute of Certified Public Accountants of Singapore) is reproduced below to help explain the position taken by the IRAS with regard to the application of s 33.

> "The apprehension you have expressed stems largely from the literal reading of section 33. It should be noted that Courts in jurisdictions with similar provisions have not adopted such a literal interpretation. On this basis, it should be clear that section 33 is not intended to bring to bear the examples cited.
>
> For instance, the placement of monies in POSB or with a bank outside Singapore, the non-remittance of foreign income or the provision of housing accommodation to employees directly, instead of giving a taxable housing allowance, is never a target of the proposed legislation. Taken to its extreme, the suggestion would be that the Comptroller could now impute an earning even when a taxpayer prefers to hold cash. This is unreasonable. In fact the interpretation of similar legislation in other jurisdictions shows that such cases could not be caught under the amended section 33. There can be other examples where tax planning is normally done.
>
> For instance, pioneer companies which have legitimately incurred losses or low profits in their non-pioneer activities may set up separate entities for such non-pioneer activities to avoid being caught under section 8(4) of the *Economic Incentives (Relief from Income Tax) Act* which specifies that if the non-pioneer activity results in a profit margin of less than 5%, the profit margin shall be deemed as 5% and the pioneer income reduced accordingly. We would like to stress that section 33 is aimed at blatant tax avoidance schemes designed to avoid tax and is not intended to affect normal commercial transactions.
>
> We have studied the anti-avoidance provisions of a number of countries before drafting the proposed amendments. Even Hong Kong has deemed it necessary to adopt such provisions long before us. Needless to say, tax consultants and others with vested interest in Hong Kong raised strong objections. However, the law was passed in view of the increased usage of deliberate tax avoidance schemes and as the leakage in tax revenue was thought to be considerable.

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The safeguards provided under the amendment are to be found in the judicial interpretations of legislations having similar wordings such as New Zealand and Australia. For this, there is a considerable body of case law on which we can rely for the purpose of construing section 33. One of the principles that has emerged is that the provisions will not apply to *bona fide* commercial transactions even if these result in tax savings where such savings are incidental to the transactions. On the other hand, the provisions would apply to transactions where payment of tax is avoided through deliberate tax avoidance arrangements.

Unlike the provisions adopted by some countries, we have deliberately avoided sweeping and "catch all" clauses. For instance:

(a) in Malaysia, the provisions allow the Director-General, if he has reason to believe that any transaction will result generally in altering the incidence of tax, reducing the tax or avoiding tax, to disregard such transactions and make necessary adjustments

(b) in Hong Kong, transactions which have the effect of conferring tax benefits, having regard to certain criteria (such as the manner in which the transaction was carried out and the change in the financial position of the relevant person from the transaction), would be deemed to have been designed solely for the purpose of tax avoidance.

Amongst the principal characteristics we look for in determining the presence of a tax avoidance scheme are:

(a) the interposing of various transactions to fit within the provisions of the law to obtain reduction in tax or even complete exemption

(b) artificiality, and

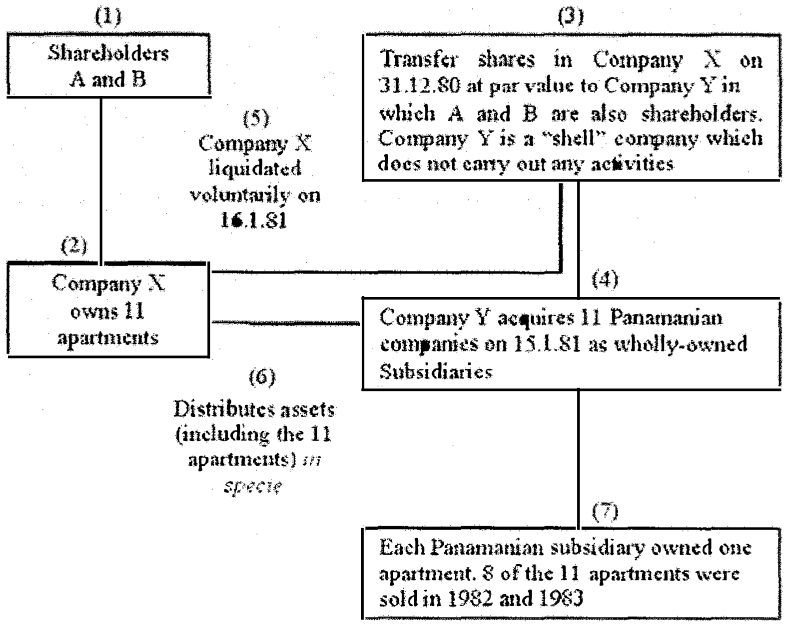
(c) transfer pricing.

We append below the brief facts on some cases where steps were introduced into an arrangement to gain a tax advantage:

Example 1

A and B are the shareholders of Company X carrying on the business activity of investment holding from years 1976 to 1979 and, from YA 1980 to YA 1981, an additional activity was property letting. The company purchased 11 apartments in a condominium project in 1979 and commenced to receive rental income. The rental income and dividend income from investment were taxed on the company for YA 1976 to YA 1981.

When the company decided to sell the properties in 1982 and 1983 for a profit, instead of selling them direct they arranged to make the sale under the following scheme:



Steps (3), (4), (5), (6) and (7) were created so that Company X which is selling the apartments within a short span of time from the date of the purchase, will not be subject to tax on the profits. With this scheme, each Panamanian subsidiary would be considered in isolation when selling the property. Considering that each holds only one property sold, the probability of treating for tax purposes that each of them is carrying on the trade of buying and selling the property is very small. Hence, the chance of being taxed on the gains from the sale is very small.

Example 2

Company A was incorporated on 10 February 1982 with the intention of carrying on the business of developing properties. The company purchased a piece of land from a sister company on 2 April 1982 at a much inflated price. The value was inflated by an amount, which is approximately $6m.

In so doing, Company A can charge a higher cost against sale proceeds from the building on completion, thus lowering the profits that will be subject to tax."

The Minister for Finance said that adequate safeguards against penalising legitimate transactions can be found in the judicial interpretations of similar laws in New Zealand and Australia.

Although the anti-avoidance provisions in the tax statues in Australia and New Zealand are not identical, and these provisions are also not identical to s 33, the Board, the High Court and the Court of Appeal in the *AQQ v CIT* decisions considered the principles enunciated in decisions from Australia and New Zealand. These decisions are useful in understanding the approach to adopt in interpreting and

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applying s 33(1), and decisions from the UK are useful in interpreting s 33(3)(b). As such, it would be instructive to examine the case law of these countries in interpreting and applying s 33. However, in the light of *AQQ v CIT and another appeal*, it is submitted that decisions from these common law jurisdictions on their local anti-avoidance provisions should now be read in the context of the approach set out by the Singapore Court of Appeal.

¶20-220 Specific anti-avoidance provisions

The following are some examples of specific anti-avoidance measures set out in the Act:

Section	*Particulars*
14(2)	Payments to employees related to the employer
20(1A)	Open market price of certain plant or machinery
23(4)	Transfer or sale of a company with unabsorbed capital allowances
24	Sales of industrial building, plant or machinery between associated persons
30	Undistributed profits deemed distributed and assessable
31	Avoidance of tax by settlements
32	Valuation of trading stocks on discontinuance or transfer of business
34D	Transactions not at arm's length
37(12)	Transfer or sale of a loss company
37A	Restriction on deduction of trading losses against dividends
53	Assessment of profits of non-residents

The following sections provide the Comptroller with the power to obtain information on taxpayers:

Section	*Powers*
65, 65A, 65B	Powers to require production of or take possession of books, etc, including those kept in electronic or other format
65B(3)	Power to obtain information concerning other persons' income or assets or liabilities
68(2)	Return of employees by employer showing names, addresses and full remuneration of each employee
68(2B)	Return by an employer showing gains or profits derived by an employee (other than a director) from the exercise of any stock options, notwithstanding that the individual has ceased employment at the time the gain or profit is derived
69	Returns by persons in receipt of taxable income belonging to others
70	Return by occupier of property or land showing owner's name, address and rentals or other consideration paid

Chapter 20

¶20-300 Taxpayer audit

The IRAS has a systematic method of selecting industries and professions as well as taxpayers for tax audit (see IRAS e-Tax Guide "Taxpayer Audit", revised on 31 July 2007). The primary purpose of the audit is to verify that the tax return submitted is in compliance with the tax laws and that the income tax liability has been properly determined. The audit is not a tax investigation to look for acts of tax evasion. The audit involves an examination of the books, records and financial affairs of the taxpayer. It is either carried out at the premises of the taxpayer or at the IRAS office.

The IRAS e-Tax Guide lists the following common errors that have been discovered during the course of the IRAS audits and suggests ways of avoiding some of these errors:

- understatement of income
- overstatement of purchases and other expenses
- wrongful claims of prohibited expenses
- incorrect valuation of closing stock
- failure to report income from other sources
- failure to report employees' benefits, and
- failure to withhold tax on certain income paid to non-residents.

Note that the submission of an incorrect tax return is an offence on which penalty can be imposed. The amount of penalty would depend on the gravity of the offence as given under s 95, 96 or 96A of the Act (see ¶17-620 and ¶20-100).

¶20-400 Investigation

Investigative procedure

Investigative proceedings are taken only after preliminary inquiries produce *prima facie* evidence of evasion and the relevant authority has given approval for investigation. The preliminary inquiries usually begin when errors are made in the returns and when the taxpayer has admitted that he had either omitted or understated his income. The extent of the investigation will depend on the nature of the offence, the sources of income involved and the quantum of income. The Comptroller, after raising the usual queries, will usually summon a taxpayer to his office and invite the taxpayer to make a complete disclosure of all irregularities, past and present, in his returns.

The Comptroller may conduct his queries as follows:

- Specific queries — The Comptroller may pose specific queries to the taxpayers, eg cost and sale price of properties, shares and other investments, the sources of money used, the extent of capital investment, etc.
- Call for interview — At the interview, the Comptroller will disclose some of the information that had led him to investigate the case. Often, the Comptroller will give a strong impression to the taxpayer that he is a suspect. The taxpayer will be advised to make a complete voluntary disclosure to minimise the penalties. At this stage, the Comptroller may base his case on suppositions and his motive is to create a sense of fear and guilt in the mind of the taxpayer.
- Enquiries into accounts and documents — The taxpayer will be asked to produce assets and liabilities statements not only of his business affairs but also his personal wealth, if relevant. The taxpayer may also be required to produce bank statements, documentary proof of sources of funds, statement of living expenses, etc.

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- Visit by Comptroller's representative — This is normally done when there is a strong suspicion of tax evasion and where there is a likelihood of criminal proceedings. It is not unusual, however, for the Comptroller's representative to make an unannounced call at the taxpayer's office even before a proper investigation is instituted. The taxpayer in such circumstances must guard against any statement he makes which may be used against him at a later stage.

Detection of omitted income

Under-declaration of income and under-assessments in the past can come to light by a taxpayer's disclosure, discovery by the Comptroller, or a third party's disclosure.

(a) Disclosure by taxpayer

A disclosure by a taxpayer can broadly fall under two categories. Firstly, the taxpayer informs the Comptroller of an error in his returns or his misunderstanding of the law. Such a disclosure would not entail problems for the taxpayer if the error was a pure mistake and there were no imputations of negligence. Thus, where a taxpayer omits to include in his returns one dividend of the many he had received, the subsequent disclosure of this omission may be considered a genuine mistake.

The second category of disclosure is more serious. Here, a taxpayer discloses to the Comptroller errors in his returns or accounts which are the result of deliberate fraud, wilful default or negligence. Such a disclosure can be voluntary, under advice from an accountant or solicitor or under pressure from a third party. Where the disclosure is a forced one, the Comptroller will apply more stringent tests. The Comptroller may choose not to institute criminal proceedings where the disclosure is complete and the questions of tax and penalties are settled by negotiations.

(b) Discovery by the Comptroller

The Comptroller can discover a taxpayer's omissions of income in the following ways:

- from a survey of the taxpayer's growing prosperity which may be inconsistent with his returns of income
- from a study of the income tax returns made by a taxpayer over the years
- from a study of the average rate of profits made by taxpayers carrying on a similar trade or business
- through local knowledge and reputation of the taxpayer
- through referencing, eg the Comptroller may request for invoices issued by the taxpayer from purchasers who are required to substantiate certain deductions. Alternatively, the Comptroller's representatives may undertake purchases to obtain invoices or receipts. The invoice amounts may then be verified as to whether it has been reported as the taxpayer's income, and
- through the examination of accounts, bank statements and other records maintained by the taxpayer.

(c) Disclosure by third parties

This may be done by informers who are normally disgruntled employees, trade rivals, private enemies, or those who seek reward. It appears that the Comptroller may reward informers who provide valuable information resulting in the recovery of tax from a tax evader. The information can also come indirectly from an accountant. An accountant who prepares computations and negotiates the tax liability of a taxpayer is professionally bound to avoid submitting information which he knows to be incorrect.

If a client has requested that incorrect information be submitted to the Comptroller, the accountant should consider resigning from his position. A resignation by an accountant in these circumstances invariably arouses the Comptroller's suspicion.

The Comptroller's sources of information

All taxpayers who are chargeable to tax have to notify the Comptroller and file a return (s 62). Failure to do so is an offence. A taxpayer's indifference to this obligation under a false presumption that "the Comptroller will never know" can lead the taxpayer into serious trouble. The Comptroller has his own sources of information, some of which are as follows:

- Registrar of Vehicles, Land Transport Authority — provides information of all new vehicles purchased and registered in Singapore.
- Accounting and Corporate Regulatory Authority (formerly Registrar of Companies and Businesses) — provides information of all companies and businesses registered in Singapore, including companies incorporated here and branches of foreign corporations.
- Singapore Land Authority — furnishes complete lists of changes in the ownership of properties, the acquisition of new properties and alterations in property mortgages and loans.
- Maritime and Port Authority of Singapore — provides information on the registration and issue of licences to ships, motor launches and other vessels.
- Government *Gazette* — is a source of information for the Comptroller. It covers, among other things, names of contractors who have tendered for government contracts, names of doctors, lawyers and other professionals engaged or practising in Singapore, names of approved banks and other financial institutions, names of bankrupts, etc.
- Employers — under the Act, employers are required to provide the Comptroller with information on the income of their employees.
- Information from other taxpayers' returns — such information comes from within the Revenue department.
- Immigration & Checkpoints Authority of Singapore — furnishes information regarding the names of employers, remuneration, etc, of new arrivals in Singapore who seek employment or professional visas, arrivals and departures of persons in and from Singapore.
- Other sources — these include newspapers, write-ups of taxpayers, advertisements, promotions, etc.

The investigator's scrutinising eye

The following situations may be a subject for intensive queries and possible investigation:

- disproportionate gross profit percentages
- unexplainable business losses
- disproportionate repair charges to depreciable assets

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- excessive travel and entertainment expenses
- investment income out of proportion to other income
- inadequate drawings for living and other private expenses
- introduction of capital out of proportion to current earnings
- round sum debits to expense accounts
- irregularities or discrepancies in distribution of partners' income, interest, drawings, insurance, etc
- substantial variations in amounts in balance sheet and profit and loss items at the end of two consecutive taxable years, and
- unusual accrued liabilities remaining unpaid at the end of an accounting year.

Determination of undisclosed income

A basic principle that one has to bear in mind in tax investigation work is that a taxpayer's income for a year is the total of the taxpayer's savings and expenditure for that year. If all the taxpayer's savings and expenses are known over the years and the sum total of these is what the taxpayer has disclosed in the returns, then there is no omitted income.

The first step that the Comptroller takes is to find out the net worth of a taxpayer at certain dates. Annual figures are usually adopted. The following shows how omitted income is ascertained:

			Capital at		
	31.12.X1	31.12.X2	31.12.X3	31.12.X4	31.12.X5
	$	$	$	$	$
OCBC Bank current a/c	3,600	6,500	2,400	4,000	2,500
UOB fixed deposit	—	1,000	2,000	5,000	15,000
Shares	—	—	1,600	15,000	12,000
Motor car	—	—	10,000	10,000	10,000
Cash in hand	250	600	400	300	100
Property	25,000	25,000	25,000	25,000	25,000
	28,850	33,100	41,400	59,300	64,600
Less:					
Loan from brother	—	—	—	(10,000)	(10,000)
	28,850	33,100	41,400	49,300	54,600
Capital at beginning of year	—	28,850	33,100	41,400	49,300
Capital increase during year	—	4,250	8,300	7,900	5,300
Add:					
Annual known expenditure (estimated)	—	12,000	12,000	15,000	17,000
	—	16,250	20,300	22,900	22,300
Less:					
Annual known income	—	(10,000)	(15,500)	(22,400)	(22,000)
Omitted income	—	6,250	4,800	500	300

The investigator will produce a net worth statement like the above to support an additional assessment on a taxpayer who is alleged to have omitted income.

The net worth method of estimating omitted income has a shortcoming. "It is inherent in the 'assets method' of deducing income that whereas it shows the income earned over the period to which it is applied, it cannot for certain, and with absolute accuracy, demonstrate the precise time when such income was in fact earned" (*Phillips v CIR* (1959) NZLR 1357).

Out-of-court settlement

The computation of omitted income by the Comptroller may be challenged by the taxpayer. If the taxpayer accepts the figures, he may then negotiate for a settlement of the additional tax payable and the penalties imposed under s 96 or 96A. The amount of penalties to be imposed would depend on the gravity of the offence, the level of cooperation given by the taxpayer during the tax investigations and the financial ability of the taxpayer to pay the additional tax and penalties. In some cases, the Comptroller may allow the payment of the tax and penalties by instalments. A settlement is complete when a letter of offer from the Comptroller has been accepted by the taxpayer.

Criminal proceedings

Often, cases of tax evasion lead to criminal prosecution. The preparation and presentation of a case requires time and intensive work both for the Comptroller and the taxpayer and, unless a settlement becomes impossible, this measure should not normally be resorted to. It is, however, not unusual for the Comptroller to take out such proceedings against a taxpayer if only to provide a deterrent for other tax evaders.

What a taxpayer must do

Paying less tax legitimately is acceptable but doing this by wilfully omitting part of one's income or claiming expenses which were not incurred is fraudulent. The following are some guidelines for taxpayers:

- Understand and comply with the income tax laws. A tax advantage can be lost through ignorance of the law. It is possible, with knowledge of the law, to take advantage of express terms or omissions in the Act.
- Make a full and true disclosure of all material facts in the annual returns.
- Maintain proper and complete records of all business activities.

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CHAPTER 21

GOODS AND SERVICES TAX

NATURE OF GOODS AND SERVICES TAX (GST)

¶21-110 Concept of GST

The goods and services tax (GST) is a complex tax. This chapter serves merely as an introduction to the GST in Singapore.

GST or value-added tax (VAT) is a tax on domestic consumption. It is a multi-stage tax for which the tax burden is intended to fall on the final consumer.

The basic principle is that a GST-registered person (and a non-GST-registered person who is required to register for GST purposes) is required, where applicable, to charge GST on his "outputs" (ie the goods sold or services provided by the person) and pay GST on his "inputs" (eg the raw materials, machinery and equipment, and services used in the person's business) (see ¶21-230). GST charged on outputs is known as the "output tax" and GST paid on inputs is known as the "input tax". If the output tax exceeds the input tax for the person's prescribed accounting period, the difference is the net amount of GST the person would pay to the Inland Revenue Authority of Singapore (IRAS). If the input tax exceeds the output tax, the IRAS will refund the difference to the person.

By allowing input tax to be claimed and therefore taxing only the value added at each stage in the chain, the above design of GST (known as the "invoice method") avoids a cumulative or cascading effect.

Refer to Illustration 1, which assumes that:

(i) the trader at each stage is GST-registered, and

(ii) the supplies of goods at each stage are standard-rated at 7% (effective from 1 July 2007).

Illustration 1: Collection of multi-stage GST at 7%

	Sale price (before GST)	*Input tax*	*Output tax*	*Payment to IRAS*
Raw materials supplier sells raw materials	$10.00	–	$0.70	$0.70
↓				
Manufacturer (sells finished products)	$50.00	$0.70	$3.50	$2.80
↓				
Retailer sells finished goods	$70.00	$3.50	$4.90	$1.40
↓				
Consumer				
			Total GST paid to IRAS	$4.90

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¶21-120 Overview of Singapore GST

The GST was implemented on 1 April 1994. The *Goods and Services Tax Act (Cap 117A, 2005 Ed)* (the "GST Act") is modelled on the United Kingdom (UK) VAT legislation and the New Zealand GST legislation. The IRAS acts as an agent of the Singapore Government and administers, assesses, collects and enforces payment of GST. The Comptroller of Goods and Services Tax (CGST) is appointed by the Minister for Finance (the "Minister") (s 4, GST Act) and is responsible for carrying out the provisions of the GST Act and the collection of GST in general.

In this chapter, unless otherwise stated, all section references refer to the GST Act.

GST is chargeable on any supply of goods or services made in Singapore if it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by the person. The importation of goods into Singapore is also subject to GST (s 8).

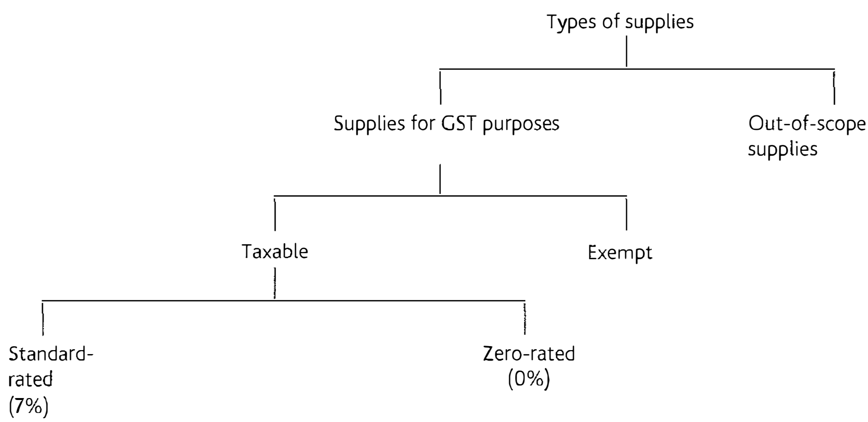
Types of supplies

GST is chargeable on taxable supplies.

A taxable supply is a supply of goods or services made in Singapore other than an exempt supply (s 8(2A)). A taxable supply can either be a standard-rated or a zero-rated supply. Although GST is a broad-based tax, a limited number of supplies are either zero-rated or exempt.

Illustration 2 depicts the different types of "supply" in Singapore.

Illustration 2



Zero-rated supplies are subject to GST at 0%. A GST-registered person who makes zero-rated supplies is able to claim a credit for input tax paid on purchases of inputs. In Singapore, zero-rated supplies consist of:

- exports of goods, and
- the provision of international services (conditions apply; see "Zero-rating" at ¶21-510).

GST is not chargeable on exempt supplies. There are three categories:

- the sale and lease of residential property
- financial services (see Fourth Schedule), and
- the supply (and import) of investment precious metals (from 1 October 2012).

An important difference between exempt supplies and zero-rated supplies is that a person who makes only exempt supplies cannot claim input GST.

Non-legal entities (NLEs) — requirement to charge output tax

A non-legal entity (NLE) (eg partnership or society) can be GST-registered. Because it lacks legal capacity however, a GST-registered NLE may hold goods, intellectual property rights (IPRs) or licence to use IPRs (collectively "property") that it uses for its business only through a legal entity (eg partners of a partnership or a company). The legal entity acts as a bare trustee. A bare trustee means a trustee who:

(a) holds any goods, IPRs or licence to use any IPRs, on trust for:

  i. taxable persons carrying on a business in a GST-registered partnership, or

  ii. a taxable person that is a registered club, association, society or organisation,

(b) has no beneficial interest in the goods, rights or licence, as the case may be, and

(c) has no duty to perform in relation to the goods, rights or licence, other than to act in accordance with instructions given by the taxable persons or taxable person, as the case may be, for any supply relating to the goods, rights or licence.

To put NLEs on par with legal entities as regards the GST implications of holding property, from 1 January 2015, any supply that is made by a bare trustee relating to property which is held by the bare trustee for the taxable persons or taxable person, as the case may be, will be treated as a supply made by the taxable persons or taxable person (the new s 10A inserted by the *GST (Amendment) Act 2014*). It follows that the NLE will be required to account for GST on supplies of such property made by the bare trustee.

For the same policy reason, from 1 January 2015, NLEs will similarly be able to claim input tax on supplies made to the bare trustee on behalf of such NLEs (see ¶21-610; conditions apply).

IMPOSITION OF GST

¶21-200 Imposition of GST

Under s 8(1), GST shall be charged on any supply of goods or services made in Singapore where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him. The GST chargeable is collected by the GST-registered person.

Under s 8(4), GST shall also be charged on the importation of goods into Singapore. The GST chargeable is collected by the Singapore Customs.

Refer to Illustration 3.

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Illustration 3

Imposition of GST in Singapore

Supply	Importation of goods
(1) of goods or services	(1) into Singapore
(2) made in Singapore where it is a	(2) by any person
(3) taxable supply	(subject to GST reliefs –
(4) made by a taxable person	see ¶21-315 and ¶21-540)
(5) in the course or furtherance of any business carried on by him	

Out-of-scope supplies

It follows that a transaction is not chargeable to GST in Singapore if:

- it does not satisfy all the elements under s 8(1) for the imposition of GST, and
- it is not an importation of goods.

The following transactions do not satisfy all the elements of s 8(1):

- where there is no supply and it is not a "deemed supply" under the GST Act (eg a small gift made in the course of a business) (see ¶21-210)
- where the supply is made outside Singapore
- where the supply is not made by a taxable person
- where the supply is not in the course or furtherance of a business (ie private transactions)
- where the supply was made before 1 April 1994
- brokerage charges on foreign shares (an IRAS concession effective from 1 July 1996)
- transfer of assets pursuant to a transfer of business qualifying as an excluded transaction, ie qualifying as neither a supply of goods nor a supply of services (GST (Excluded Transactions) Order) (see ¶21-240)
- where a provider of hire-purchase finance transfers or assigns his title to goods comprised in a hire-purchase agreement together with the hire-purchase finance relating to such goods (GST (Excluded Transactions) Order), and
- transfer of qualifying deductions under the group relief system (GST (Excluded Transactions) Order) (see ¶9-500). Note, however, that if a company supplies services to another company in return for transferring its qualifying deductions, such a transfer will not be an excluded transaction; the non-monetary consideration for the services supplied would have to be valued for GST purposes.

(See IRAS e-Tax Guide "GST: Transfer of Business as a Going Concern and other Excluded Transactions", published on 3 March 2015. This e-Tax Guide consolidated "GST: Transfer of Business as a Going Concern", published on 15 March 2010 and "Goods and Services Tax Treatment of Transfer for a Consideration of 'Qualifying Deductions' Allowed under the Income Tax Group Relief System", published on 16 July 2003.)

Note that an importation of goods, although not chargeable to GST under s 8(1), is nevertheless chargeable to GST under s 8(4) at the point of importation unless a GST relief applies (¶21-540).

¶21-210 Supply

The GST Act does not define "supply". In its ordinary sense, the word "supply" means "to furnish or to serve" (*Carlton Lodge Club Limited v C&E Commrs* (1974) 3 All ER 798). Thus the term "supply" would appear to contemplate all types of transactions pursuant to which something (presumably of value) is provided by one party to another.

Section 10(2) states that "supply" includes "all forms of supply, but not anything done otherwise than for a consideration". Anything that is not a supply of goods but is done for a consideration is a supply of services (s 10(2)(b)). In other words:

- anything that is done for a consideration is a supply for GST purposes,
- if no consideration is given for the supply, then it is a supply for GST purposes only if it is a "deemed supply" under the Second Schedule to the GST Act.

Note however that "**excluded transactions**" (see under out-of-scope supplies in ¶21-200) are not regarded as supplies for GST purposes.

Supply of goods or supply of services

The Second Schedule to the GST Act clarifies that certain supplies are to be treated as supplies of goods or supplies of services. The appropriate classification is important because some GST rules for supplies of goods differ from those for supplies of services.

For example, the following supplies are treated as supplies of goods:

- the application of a treatment or process to another person's goods
- the provision of utilities (eg electricity, gas and water)
- the grant, assignment or surrender of any interest in, or right over, land or of any licence to occupy land
- a hire-purchase agreement that expressly contemplates that title will pass at some time in the future (not later than the date of the last instalment) to the hirer, and
- a particular financing or leasing instrument that provides for an option or right for the lessee to purchase the leased goods before or at the end of the lease period, and the leased goods are not recognised as the lessor's assets in his accounting records.

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(Second Schedule, para 1 to 4; see also IRAS e-Tax Guide "GST: Treatment of Hire Purchase Agreements and Financing Instruments, published on 16 June 2014, which replaces the previous e-Tax Guide "GST: Clarifications on the GST Treatment of Hire Purchase and Other Financing Instruments", published on 1 October 2012.)

If a lease does not contain such an option for the lessee to purchase the leased goods, there will merely be a transfer of possession of goods and this is treated as a supply of services (Second Schedule, para 1(1)(b)).

Deemed supplies

The Second Schedule also contains "deemed supply" rules for certain transactions that do not involve consideration.

For example, under the rules applicable up to 30 September 2012, a gift of goods made by a GST-registered trader to the same person (eg an employee) is a deemed supply of goods made by the trader if the following conditions are satisfied:

(i) The trader is entitled to claim any part or the whole amount of input tax on the supply or importation of those goods that form the gift, and

(ii) The cost of the gift to the trader exceeds $200, or

the gift forms part of a series or succession of gifts he made to the same person. (The IRAS regards three or more gifts made by the trader during his prescribed accounting period to the same person as forming a series or succession of gifts.)

The implication of a deemed supply is that the trader is required to charge output GST on it.

From 1 October 2012, the "deemed supply" rules were amended. A gift of goods made by a GST-registered trader to the same person is a deemed supply if:

(i) the trader has claimed any part or the whole amount of input tax on the supply or importation of those goods that form the gift, and

(ii) the cost of the gift to the trader exceeds $200.

The concept of "series or succession of gifts" (which meant that three or more gifts were made to the same person in a three-month period) no longer applies from 1 October 2012.

Under the former and current rules, there is no deemed supply if the gift:

- is an industrial or commercial sample made to an actual or potential customer of the business, and
- is in a form not ordinarily available for sale to the public (Second Schedule, para 5).

Example 1

Assume that:

(i) the GST-registered trader made the following gifts to recipients A, B and C in the quarter ended 31 March 2015. The trader claimed input tax on the cost of each gift (condition (i) above for a deemed supply is therefore satisfied), and

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(ii) the gift is not an industrial or commercial sample, and is not in a form ordinarily available for sale to the public.

Recipient	*Cost of gifts in three-month prescribed accounting period to same person*	*Account for output GST?*
A	$110; $160	No (since each gift does not cost more than $200, this is not a deemed supply)
B	$250; $130	Yes (7% GST × $250)
C	$70; $20; $50	No. Although the three gifts formed a series if they had been made before 1 October 2012, a deemed supply does not arise under the current rules.

The use by a third party of business premises owned or rented by a taxable person for free is deemed a supply of service (Second Schedule, para 5(3); see also IRAS e-Tax Guide "GST: Guide on the Use of Business Premises by Third Party for Free", published on 31 March 2014, which replaces the previous e-Tax Guide "GST: Use of Business Premises By Third Party for Free", published on 1 October 2012). The value of such a supply is the full cost to the taxable person of providing the services (Third Schedule, para 9(b)). As a proxy for full cost, the taxable person may use:

- the annual value of the property (if he owns the property), or
- the actual rental (if he rents the property).

If the third party occupies only a part of the business premises, the value of supply is determined by the annual value (or actual rental, as the case may be) of the premises apportioned according to the gross floor area occupied by the third party.

¶21-220 Place of supply

As GST is charged on a supply of goods or services made in Singapore, it is important to ascertain the place of supply.

The rules for determining the place of supply of goods differ from those for services. The term "goods" is defined to exclude money; the term "services" is however not defined (s 2).

Place of supply of goods

If the supply of any goods does not involve their removal from or to Singapore, the goods are treated as:

- supplied in Singapore if they are in Singapore, and
- supplied outside Singapore if they are not in Singapore (s 13(2)).

If the supply of goods involves their removal from Singapore (eg exports), the goods are treated as supplied in Singapore (s 13(3)). Exports are zero-rated.

If the supply of goods involves their removal to Singapore (eg imports), the goods are treated as being supplied outside Singapore (s 13(3)). Generally, GST is imposed on the importation of goods (s 7) unless they qualify for import reliefs or certain schemes that suspend the imposition of GST, eg the Major Exporter Scheme (s 24 and 27).

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Place of supply of services

A supply of services is made in Singapore if, in relation to the supply of services, the supplier belongs in Singapore (s 13(4)). A supply of services is treated as made "in another country" (and not in Singapore) if the supplier belongs in that other country. Basically, the supplier of services is treated as belonging in a country if:

(a) he has a business establishment or some other fixed establishment only in that country

(b) he has no such establishment in any country but his usual place of residence is in that country, or

(c) he has such establishments both in that country and elsewhere and the establishment which is most directly concerned with the supply is in that country (s 15(3)).

A person carrying on a business through a branch or agency in any country is to be treated as having a business establishment there (s 15(6)(a)).

If the supplier of the services is a body corporate, the term "usual place of residence" means the place where it is incorporated or otherwise legally constituted (s 15(6)(b)). If the supplier is an individual, the term refers to the place where he lives.

As an example to show how s 15(3)(c) is applied, a Singapore GST-registered company may have a place of business in Singapore of rendering IT services. If the company also has a branch in Malaysia and it is the IT staff of that branch who rendered some IT services for a Malaysian client, the supply of the services would be regarded as made in Malaysia. GST is therefore not chargeable on such a supply.

¶21-230 Taxable person

A person is a "taxable person" while he is, or is required to be, registered under the GST Act (s 8(2)). Examples of taxable persons include companies, partnerships, sole proprietors, clubs, societies, associations, charities, religious organisations and the Singapore Government.

From the definition of "taxable person" above, the responsibility to charge GST falls not only on a GST-registered person but also on a non-GST-registered person who is required to register. The First Schedule to the GST Act contains the rules relating to GST registration (see ¶21-410). Based on the local case *Woon Wee Hao v Coastland Realty Pte Ltd* (1998) MSTC 7,357, however, only a GST-registered person can charge and collect GST (see ¶21-410).

Under some circumstances, the IRAS may substitute or appoint another person (eg a liquidator or an agent) to charge and/or remit GST (s 32(4), 33, 38, 41(1)(a), 47 and 79(1); reg 58 of the Goods and Services Tax (General) Regulations ("GST (General) Regulations")).

Goods imported by a taxable person as agent, and supplied by a "substituted agent" (as defined) as agent, for a person who is not a taxable person, may be treated as imported by the taxable person as principal and supplied by the substituted agent as principal (s 33(2A), 33(2B), 33(2C) and 33(5) as amended by the *Goods and Services Tax (Amendment) Act 2013* ("GST (Amendment) Act 2013")).

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¶21-240 In the course or furtherance of any business

For GST purposes, a "business" includes any trade, profession or vocation.

The following are deemed to be the carrying on of a business:

(i) the provision by any club, association, society, management corporation or organisation (for a subscription or other consideration) of the facilities or advantages available to its members or subsidiary proprietors, as the case may be, and

(ii) the admission, for a consideration, of persons to any premises.

A body whose objects are in the public domain and are of a political, religious, philanthropic or patriotic nature is not to be treated as carrying on a business only because its members subscribe to it, if a subscription obtains no facility or advantage for the subscriber other than the right to participate in its management or receive reports on its activities (s 3).

The IRAS has indicated that the following six tests enunciated in *C & E COMMRS v Lord Fisher* [1981] STC 238 would be applied in determining the existence of a business (see IRAS e-Tax Guide "Guide on Non-Business Receipts — Business Tests and the Effect of Non-Business Receipts on Input Tax Claims", published on 30 September 2013):

(1) Whether the person is carrying on activities that amount to a "serious undertaking earnestly pursued" or "a serious occupation not necessarily confined to commercial or profit making undertakings".

This will exclude activities carried on for pleasure and social enjoyment without consideration and does not prevent activities carried on without profit motive from being a business.

(2) Whether the activities are actively pursued with reasonable and recognisable continuity.

(3) Whether the activities are conducted in a regular manner and measured by the value of supplies made periodically.

This means that supplies should be made regularly and fairly frequently as part of a continuing business activity.

(4) Whether the activities are conducted on sound and recognised business principles.

The activities should have the characteristics of a commercial undertaking with business practices and record keeping.

(5) Whether the person is carrying on activities that are predominantly concerned with the making of taxable supplies to consumers for a consideration.

For example, activities provided free or at subsidised fees without commercial reasons to benefit the public at large or a segment of the public would not satisfy this test.

(6) Whether the taxable supplies are of a kind that are commonly made by those who seek to profit by them.

An activity is more likely to be regarded as a business activity if others are carrying on the same activity and doing it for a commercial reason.

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Given the relatively high threshold level of $1m in a 12-month period for GST registration in Singapore, the issue of whether a business is being carried on is unlikely to arise.

Section 3(5) clarifies that anything done in connection with the termination or intended termination of a business is treated as being done in the course or furtherance of that business.

Subject to the GST (Excluded Transactions) Order, the disposition of a business as a going concern, or of its assets or liabilities (whether or not in connection with its re-organisation or winding up), is also a supply made in the course or furtherance of the business (s 3(5) and 3(6)).

Transfer of business as a going concern

If a transfer of business qualifies as an **excluded transaction** (ie neither a supply of goods nor a supply of services), the transferor in a transfer of business will not be required to charge output tax at the prevailing standard rate.

Administratively, the IRAS has stated that it would be prepared to treat a supply of assets as such an excluded transaction if all the conditions below are satisfied:

(a) The supply of assets is made in relation to a transfer of the business or part thereof to the transferee. A mere transfer of the assets would not satisfy this condition unless it has the effect of putting the transferee into the possession of a business. In general, this condition is satisfied where the transferee takes over all assets and liabilities of the business.

(b) The assets to be transferred must be intended for use by the transferee in carrying on the same kind of business of the transferor.

(c) Where only part of the business is transferred, that part must be capable of being operated independently.

(d) The business or part thereof must be a going concern at the time of the transfer. In other words, there must be no closure of the business immediately after the transfer, except for such temporary closure as may be necessary to put the business in operation under the new ownership.

(e) The transferee must be a GST-registered person at the time of the transfer. If the annual value of the taxable supplies of the transferee exceeds or is reasonably expected to exceed $1m immediately after the transfer, the transferee has the liability to register for GST. In such instances, the transferee is required to notify the CGST of the transferee's liability to register 30 days before the date of the transfer.

(f) Both the transferor and transferee must maintain sufficient records of the transferred assets. The records should provide information on the description and value of each asset or class of assets transferred. In addition, both transferor and transferee must be able to reconcile the difference of the values of the assets before and immediately after the transfer of business with the value of the transferred assets.

If all the above conditions are satisfied, the transferor is not required to charge and account for GST on the supply of assets. It is not necessary for the transferor to seek approval from the CGST (see IRAS e-Tax Guide "GST: Transfer of Business as a Going Concern and other Excluded Transactions", published on 3 March 2015. This e-Tax Guide consolidated "GST: Transfer of Business as a Going Concern", published on 15 March 2010 and "Goods and Services Tax Treatment of Transfer for a Consideration of 'Qualifying Deductions' Allowed under the Income Tax Group Relief System", published on 16 July 2003).

Note also the following issues in a transfer of business as a going concern:

- record-keeping requirements (s 34)
- changes to the nature of business during the five years after the transfer of business which may result in input tax repayments (s 34A; reg 38 of the GST (General) Regulations), and
- the transferor should also notify the IRAS of the transfer of business 30 days prior to the transfer.

¶21-250 Import of goods and services

The importation of goods (other than an exempt import) into Singapore is subject to GST (s 7). GST is charged, levied and payable on such goods as if it was customs duty and as if all goods imported are dutiable and liable to customs duty (s 8(4)). The responsibility for the collection of GST on imported goods lies with Singapore Customs.

Where a person who belongs outside Singapore supplies a prescribed service, not being a service specified in the Fourth Schedule, to a person (the recipient) who belongs in Singapore for the purposes of any business carried on by him, the recipient is treated as though he had supplied the service in Singapore in the course or furtherance of his business (s 14). This means that the recipient has to account for GST as if it had provided the service to itself (ie to make a reverse charge). The purpose of s 14 is to prevent an exempt or partially exempt business from avoiding GST on its inputs by obtaining services from an overseas supplier rather than a supplier who belongs in Singapore. The Minister may prescribe the services under s 14. To date, no services have been prescribed.

Approved Contract Manufacturer and Trader (ACMT) scheme

Under this scheme, import GST is suspended for the ACMT when the ACMT imports consigned goods belonging to its overseas clients. Furthermore, the ACMT performing value-added manufacturing activities substantially for its overseas client can disregard the supply of value-added service to its non-GST registered client if the treated or processed goods are:

- delivered to another ACMT, or
- exported to the overseas client's foreign customer.

If the ACMT delivers the goods on behalf of its overseas client to customers in Singapore, the ACMT must charge and account for GST on the value of the sale between the overseas client and the local customer (s 37A and reg 46 of the GST (General) Regulations).

From 1 October 2011, the ACMT scheme has been enhanced as follows:

(a) services rendered on failed or excess production under the ACMT scheme will be disregarded, and

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(b) the ACMT is allowed to recover GST on local purchases of goods made by the overseas client for use in the contract manufacturing process.

Subject to detailed conditions, an ACMT contract manufacturer also enjoys GST suspension on the importation of its own goods belonging to its overseas principals for whom it is acting as an agent either under s 33(2) or s 33A. From 1 January 2015, an ACMT (besides certain other GST-registered traders) further qualifies for GST suspension under s 33B on re-importations of goods which he previously sent abroad for value-added activities (eg testing, repair, fabrication, refining or assembly but excludes logistics services, leasing or similar activities) and which belong to his local customer or GST-registered overseas customer. This tax change from 1 January 2015 is intended to reduce the burden of irrecoverable GST and ease compliance for businesses.

(Before 1 January 2015, unless the IRAS has granted a remission of the GST concerned, such a trader would incur import GST on the full value of the goods which includes value-add from the activities performed overseas, eg by the overseas sub-contractor. The trader can claim only GST attributable to his supply of value-adding activity but not the portion of import GST relating to the original goods without the value-added component. Without the remission, therefore, the trader could not recover the full import GST when he subsequently re-imports the goods into Singapore.)

(See IRAS e-Tax Guides "GST: Approved Contract Manufacturer and Trader (ACMT) Scheme" (10th Ed), published on 10 December 2014, and "GST: Claiming of GST on Re-import of Value-added Goods", published on 10 December 2014.)

GST measures for the biomedical industry

From 1 October 2011, the following GST measures apply to the biomedical industry:

(a) GST relief is granted upfront on all clinical trial materials imported into Singapore, regardless of whether the clinical trial materials are for local testing, re-export or for disposal in Singapore. This measure will help encourage clinical research activities in Singapore and ease the GST compliance burden.

Previously, local intermediaries who imported clinical trial materials on behalf of overseas persons into Singapore for local testing were subject to 7% GST which is not recoverable. In the case of imported clinical trial materials that are subsequently re-exported or disposed of, the local intermediary can either claim back the GST paid or be relieved of import GST. However, the local intermediary may incur GST compliance costs.

(b) The ACMT scheme is extended to qualifying biomedical contract manufacturers.

(See IRAS e-Tax Guide "GST Guide for the Biomedical Industry" (2nd Ed), published on 10 December 2014.)

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¶21-260 GST on e-commerce transactions

The electronic media (eg the internet) has become an important avenue for conducting business transactions. Electronic commerce (e-commerce) transactions may involve the supply of physical goods, digitised goods, and services.

In essence, the basic principles for charging GST also apply to e-commerce transactions. A GST-registered person making a taxable supply must charge GST irrespective of the medium through which the transaction occurs. For example, a GST-registered person selling goods in Singapore via the internet (instead of the traditional mode) must charge and collect GST on the sales made. The output GST is chargeable even if the sale was made through a third-party e-commerce service provider.

The IRAS has clarified the GST treatment for e-commerce transactions. Some aspects of the GST treatment are given below:

- An e-commerce service provider, like any other business entity, is liable to collect GST if it is a GST-registered person making a taxable supply.
- Digitised goods (eg music and software) are treated as services for GST purposes.
- The "import" of digitised goods (ie when downloading music or software materials over the internet) is not subject to GST.
- The sale of digitised goods over the internet by a GST-registered person to an individual consumer or a business entity is liable to GST charge unless the customer does not belong in Singapore.

(See IRAS e-Tax Guide "GST Guide for E-Commerce" (4th Ed), published on 31 March 2014, which replaces the previous e-Tax Guide "GST: Guide on e-Commerce", published on 1 October 2012.)

Table 1 reproduces the Appendix of the above IRAS e-Tax Guide (for ascertaining whether a customer or business entity "belongs in Singapore").

Table 1: GST treatment of sales of services/digitised goods supplied over the internet

Situation	*GST Treatment*
Customer's domain name ends with dot sg (eg amylim@pacific.net.sg).	Standard-rate. Customer treated as belonging in Singapore and service is consumed in Singapore.
Customer's domain name does not end with dot sg (eg johnlee@aol.com) and customer declares that his usual place of residence is outside Singapore.	Zero-rate. Customer treated as belonging in a country outside Singapore and the service is provided to a non-resident.
Customer's domain name does not end with dot sg (eg phillip_tan@hp.com) and customer declares that his usual place of residence is in Singapore.	Standard-rate. Customer treated as belonging in Singapore based on his declaration and service is consumed in Singapore.
Customer's domain name does not end with dot sg and customer does not declare his usual place of residence.	Standard-rate. Customer treated as belonging in Singapore.

From 8 December 2004, another condition for zero-rating to apply is that the services must be supplied under a contract with the person.

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Provision of web-hosting services

Web-hosting is the business of housing, serving and maintaining files for one or more websites. A GST-registered person supplying web-hosting services is to standard-rate his supply if it is provided to a person belonging in Singapore and to zero-rate his supply if it is provided to a person belonging outside Singapore.

Web-hosting services such as simple hosting, shared hosting, virtual hosting and dedicated server hosting are considered to be services not supplied directly in connection with land or goods situated inside Singapore. The supply of such services is zero-rated under s 21(3)(j) if the services:

(i) are made under a contract with a person who belongs in a country outside Singapore, and

(ii) directly benefit a person who belongs in a country other than Singapore and who is outside Singapore at the time the services are performed.

For server co-location and managed services based on co-location arrangements, the servers brought in by the clients are treated as "goods in Singapore". Co-location hosting services entail the provision of physical space for these servers and other services in connection with the servers such as air-conditioning. The supply of such services is zero-rated under s 21(3)(s) if the services:

(i) are made under a contract with a person who belongs in a country outside Singapore, and

(ii) directly benefit a person who belongs in a country other than Singapore.

(See IRAS e-Tax Guide "GST Treatment of Web-Hosting Services and Server Co-location Services", published on 30 September 2013.)

COMPUTATION OF GST

¶21-300 Computation of GST

GST is chargeable on the value of supply. The applicable GST rate is 0% for zero-rated supplies, and 7% for standard-rated supplies from 1 July 2007.

Two relevant concepts, ie the value of supply (¶21-310) and the time of supply (¶21-320), are addressed below. For the concept of "value of imports", see ¶21-315.

¶21-310 Value of supply

The value of a supply of goods or services is determined as follows:

- *If the supply is for a consideration in money (s 17(2))*

  The value is such amount as, with the addition of the tax chargeable, is equal to the consideration, ie

  Value of supply + GST = Money consideration

- *If the supply is not for a consideration or is for a consideration not consisting or not wholly consisting of money (s 17(3))*

  Value of the supply is its open market value (OMV), ie

  Value of supply = OMV

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- *Where a supply of any goods or services is not the only matter to which a consideration in money relates (s 17(4))*

  The supply is deemed to be for such part of the consideration as is properly attributable to it.

The value of a supply includes taxes and duties such as entertainment duty, excise duty and cess, but excludes stamp duty.

Reimbursement versus disbursement

IRAS' position up to 30 June 2013

In some situations, it may not be clear whether a re-billed amount forms part of the value of supply (and therefore attracts GST) or not part of the value of supply (and therefore does not attract GST). The following information and scenarios are adapted from the IRAS website.

A GST-registered trader may pay for certain expenses on behalf of a customer and subsequently re-bill the customer for those expenses. Whether the trader is required to charge GST on the re-billed amount will depend on whether the recovery of expenses is a reimbursement or disbursement.

Scenario 1 (Typical reimbursement scenario)

A GST-registered trader (eg an audit firm) incurred taxi-fares of $200 for travelling to its client company's office to perform an engagement for audit service. The audit firm subsequently re-bills its client for the taxi-fares.

The audit firm is required to charge output GST on the re-billed amount of taxi-fares. This is because:

(i) the tax invoice (from the supplier, ie the taxi company) is issued to the audit firm and not to its client, and

(ii) the audit firm is legally responsible to pay the supplier (the taxi company).

Scenario 2 (Typical disbursement scenario)

A GST-registered trader (eg a car dealer) pays the car insurance premium on behalf of the car buyer. This is a typical disbursement scenario:

(i) A supplier (the insurance company) issues a tax invoice to the GST-registered trader's customer (ie the car buyer).

(ii) The car buyer is legally responsible to pay the insurer for the supply of goods or services.

(iii) The car dealer is merely paying the car insurance premium on behalf of the car buyer.

When the car dealer subsequently re-bills the car buyer for the premium, it is not required to charge output GST on the premium. This is assuming that all the IRAS conditions below for a disbursement are met:

(i) The car buyer is responsible for paying the supplier (the insurer).

(ii) The car buyer knows that the goods or services would be provided by that supplier.

(iii) The car buyer has authorised the car dealer to make the payment on his behalf.

(iv) The car buyer is the recipient of the goods or services.

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(v) The payment is separately itemised when the car dealer invoices the car buyer.

(vi) The car dealer recovers only the exact amount paid to the supplier (the insurer).

(vii) The goods or services paid for are clearly additional to the supplies the car dealer makes to the car buyer.

In this scenario, the car dealer will not be allowed to claim input tax incurred for the original supply (of car insurance) as it is not made to him.

IRAS' position from 1 July 2013

From 1 July 2013, whether a recovery of expenses is treated as a reimbursement or disbursement is no longer dependent on the above conditions. Instead, the IRAS will treat a recovery of expenses as a reimbursement if the GST-registered trader has incurred the expenses as a principal, and as a disbursement if the trader has incurred the expenses as an agent (ie on behalf of another person). The manner of invoicing (eg showing such expenses as a separate item on the invoice) is, by itself, insufficient to determine the GST treatment of those items.

The IRAS also states that generally, the trader is acting as a principal in procuring the goods or services if he contracts with the supplier in his own name or capacity. If the contractual relationship is not clear, the following **indicators** can be used as a guide to determine whether the trader is acting as a principal (as opposed to an agent):

- whether he bears the contractual liability and assumption of responsibilities and risks
- whether he has legal obligations to make payment or payment arrangement for the goods and services (eg the third-party supplier's tax invoice is issued in the trader's name)
- whether he has the authority to alter the nature or value of the supplies and make decisions on the value of expenses to recover
- whether he is the only party known to the third-party supplier, and
- whether he owns the goods.

The above indicators replace the conditions for disbursements listed under the former IRAS' position up to 30 June 2013. While those conditions have served as useful administrative guidelines, the IRAS takes the view that the indicators based on the underlying "principal or agent" relationship serve better in distinguishing a disbursement from a reimbursement.

For the details and useful examples illustrating the current IRAS' position, (see IRAS e-tax Guide "GST: Guide on Reimbursement and Disbursement of Expenses", published on 31 May 2013).

Open market value (OMV)

The OMV is the GST-exclusive price that the goods or services would fetch at that time when they are supplied between two unrelated persons (s 17(5)). This price is net of discounts.

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Anti-avoidance provisions apply to supplies between "connected persons" (Third Schedule). In such instance, the CGST may direct that the value of a supply be taken to be its OMV where:

(a) the supply is made for a consideration in money

(b) the consideration is less than the market value of the supply

(c) the supplier and the customer are connected, and

(d) if the supply is a taxable supply, the customer is unable to recover some or all of the tax chargeable as input tax (eg if the customer is not registered for GST, or is partially exempt) (Third Schedule, para 1).

Valuation rules in special cases

Valuation rules for special cases including business assets, employee benefits, foreign exchange, taxes and duties, residential premises and motor vehicles are set out in the Third Schedule to the GST Act.

Transfer or disposal of goods

The transfer or disposal of goods that form part of a person's business assets (whether or not with consideration) is deemed to be a supply (Second Schedule, para 5(1)).

When a person ceases to be a taxable person at the time of de-registration from GST, the goods forming part of that person's business assets is also deemed a supply by that person in the course or furtherance of his business immediately before that person ceases to be a taxable person (subject to some conditions) (Second Schedule, para 7(1)). The value of goods deemed supplied is:

(i) the OMV of the goods, ie the price of the GST-exclusive goods the taxable person has to pay if the person were to purchase them (identical in every aspect) at the time of the transfer, disposal or de-registration, taking into account their age and condition

(ii) (if the OMV is not readily available) the GST-exclusive price payable if the taxable person were to purchase goods similar to, and of the same age and condition, as the goods concerned, at the time of transfer, disposal or de-registration, or

(iii) (if the value in (ii) is also not available) the cost of producing the goods if they were produced at the time of transfer, disposal or de-registration (Third Schedule, para 8).

Example 2

(a) Supermart, a GST-registered person, sells a bottle of wine at a "GST-exclusive price" of $20 on 3 February 2015. The consideration is:

Value of supply + GST = $20 + ($20 × 7%) = $21.40

If the bottle of wine is being sold at a "GST-inclusive price" of $20, GST included in the price is calculated as follows:

7/107 × $20.00 = $1.31

(b) On 20 January 2015, Mr Lee, a GST-registered person dealing in furniture, sold a dining table to his sister for $8,560 inclusive of GST. The OMV for the table is $13,000. Mr Lee made an output tax payable to the CGST of $560 (ie $8,560 × (7/107)).

As the transaction was not at arm's length (ie it was between two "connected persons" (Third Schedule, para 3)), the value of supply should be based on the OMV and not the transaction price. The amount of output GST payable should be $13,000 × 7% = $910.

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(c) John had a meal at a GST-registered hotel on 4 March 2015. He was charged $100 for the cost of food, and $10 as a service fee (ie 10% of $100).

The value of supply (inclusive of service charge) is $110. Accordingly, the GST chargeable is $7.70 (ie 7% of $110) and John would have to pay a total consideration of $117.70.

¶21-315 Value of imports

Where goods are imported at a price in money payable, the value of imported goods for GST purposes is generally the landed cost, insurance and freight (CIF) value plus all duties payable (except GST), commission and other incidental charges (s 18).

Example 3

Price of goods	$10,000
Freight and insurance	$2,000
CIF value	$12,000
Add customs duty (assume)	$3,600
Taxable value	$15,600
GST (7%)	$1,092

(Source: IRAS e-Tax Guide "GST: Guide on Imports" (3rd Ed), published on 22 December 2014.)

Unless a GST relief applies (¶21-540), GST is chargeable on the value of the imported goods at the point of importation into Singapore.

The Third Schedule to the GST Act has anti-avoidance provisions directed at importation of goods between connected persons.

¶21-320 Time of supply

Rule applicable from 1 January 2011

From 1 January 2011, the time of supply rule has been simplified to allow most businesses to account for GST at the earlier of (s 11(2)):

(a) the date an invoice (not necessarily a tax invoice) in respect of the supply is issued, and

(b) the date payment in respect of the supply is received.

The IRAS has clarified that "invoice" includes (i) tax invoice, and (ii) any document that serves as a bill for payment for supplies made, eg a debit note. Sales order, pro-forma invoice, statement of accounts and letters/statements of claim are usually not billing for payments and are therefore not an "invoice" for purposes of applying the time of supply rules.

The change simplifies GST accounting for most businesses as they will no longer be required to track the date on which goods are delivered/made available or when services are performed.

Example 4

In the two scenarios below, assume that Toysland and Quality Service Company (QSC) are both GST-registered persons with prescribed quarterly accounting periods ending on 31 March, 30 June, 30 September and 31 December.

(a) On 30 June 2014, Toysland sold and delivered 100 toy robots to one of its retailers in Singapore. The invoice was issued on 1 July 2014. Full payment, inclusive of GST, was received on 31 July 2014.

The time of supply is 1 July 2014 (when the invoice was issued). Toysland must account for the output GST for the prescribed accounting period ended 30 September 2014.

(b) QSC completed the repairs of the manufacturing equipment for one of its customers in Singapore on 25 September 2014. The repair job was done over a 10-day duration. Payment was received on 15 September 2013. QSC issued the invoice on 3 October 2014.

The time of supply will be 15 September 2014 (when payment was received). QSC must account for output GST for the prescribed accounting period ended 30 September 2014.

Note that there are circumstances (eg GST registration and de-registration) where the date on which goods are delivered/made available or when services are performed will be retained as a reference point (s 11A, 11B and reg 15, 16, 20 and 23 of the GST (General) Regulations). Some of these special cases are:

- goods for private use and free supplies of services
- grant of a licence, tenancy or lease
- supply of power, electricity, gas, water and telephone
- supply of goods in respect of which title has been reserved
- continuous supplies of services (ie where the supply of services is for a period of time and the consideration is determined or payable periodically)
- royalties, and
- long-term construction contracts.

The CGST is authorised to make directions and regulations to alter the time of supply rules if so requested by a taxable person (s 12).

(For details on the time of supply rules, see IRAS e-Tax Guide "GST: Time of Supply Rules", published on 31 December 2013.)

Historical note: Rule applicable up to 31 December 2010

The time of supply represents the point in time GST must be levied on a taxable supply. It will determine the period in which the supplier must account for the output tax to the IRAS and the period for which a GST-registered customer can claim the input tax credit.

Generally, the time when a supply of goods or services is treated as having taken place (also known as the "tax point") is the earliest of:

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- the time of removal of goods or the time the goods were made available to the buyer and (in the case of a supply of services) the time the services were performed
- the time of payment, or
- the time of issue of tax invoice (the old s 11 and 12).

14-day rule

If:

(i) a tax invoice is issued within 14 days of the removal or availability of the goods or the performance of the services, and

(ii) the time of payment is not before the removal or availability of goods or the performance of the services,

the time of supply will be the date when the tax invoice is issued.

A person can, however, elect not to avail himself of this "14-day rule" by notifying the CGST in writing (the old s 12(2)). The CGST may also consider requests for a "longer than 14 days" rule to apply instead (the old s 12(3)).

Example 5

In the two scenarios below, assume that Supermart and Excel Hotel are both GST-registered persons with prescribed quarterly accounting periods that end on 31 March, 30 June, 30 September and 31 December.

(a) On 25 June 2010, Supermart received an order from FastFood, a regular customer in Singapore, for 100 bags of rice. Full payment, inclusive of GST, was received on that date. Supermart delivered the goods to FastFood on 4 July 2010.

The time of supply was 25 June 2010 (when the payment was received). Supermart must account for the output GST for the prescribed accounting period ended 30 June 2010.

(b) On 25 September 2010, Wilson (the Regional Director of THP Company) checked in as a guest at Excel Hotel for three days. On 3 October 2010, Excel Hotel issued a tax invoice to Wilson.

Payment was received on 31 October 2010.

The time of supply was 3 October 2010 as the tax invoice was issued within 14 days of the date on which the service was performed. Excel Hotel will account for output GST for the prescribed accounting period ended 31 December 2010.

GST REGISTRATION

¶21-410 Compulsory registration

The First Schedule to the GST Act sets out all the matters regarding registration for GST.

A person (including a person who acquired a business as a going concern) is required to register for GST if the total value of his taxable supplies (excluding supplies of goods that are capital assets) exceeds or is expected to exceed $1m (First Schedule, para 1(5)).

There are two methods to determine whether a person is required to register for GST:

- *Retrospective basis* — if at the end of any quarter, the total value of all the person's taxable supplies made in Singapore in that quarter and the three quarters immediately preceding that quarter has exceeded $1m. The CGST must be notified within 30 days of the end of that quarter.

  If the CGST is satisfied, however, that the value of the person's taxable supplies (excluding sale of capital assets) in the next four quarters will not exceed $1m, the person is not required to register for GST (First Schedule, para 1(3)).

- *Prospective basis* — if, at any time, there are reasonable grounds for believing that the total value of the person's taxable supplies in the period of 12 months then beginning will exceed $1m. The CGST must be notified within 30 days of the beginning of that period.

Where there are reasonable grounds for believing that the value of a person's taxable supplies in the first 30 days of a period will exceed $1m, the CGST may, if he thinks fit, register the person with effect from the beginning of the period (First Schedule, para 5(3)).

Example 6

Below is a determination of whether any of the suppliers (A, B and C) are required to register for GST purposes as at 31 March 2015.

Turnover for 4 quarters	*Supplier A ($)*	*Supplier B ($)*	*Supplier C ($)*
1 April 2014–31 March 2015 Actual	1,700,000	900,000	1,600,000
1 April 2015–31 March 2016 Expected	1,800,000	1,200,000	800,000
Registration required?	Yes	Yes	No

(a) Supplier A is required to register because the total value of all his taxable supplies made in Singapore in the four quarters ended 31 March 2015 exceeded $1m and the expected value of his taxable supplies in the next four quarters will exceed $1m. He has to notify the CGST by 30 April 2015.

(b) Supplier B is required to register because he expects the value of his taxable supplies in the next four quarters to exceed $1m. He has to notify the CGST by 30 April 2015.

(c) Supplier C is not required to register. Although the total value of all his taxable supplies in the four quarters ended 31 March 2015 exceeded $1m, he estimates the value of his taxable supplies in the next four quarters to be less than $1m and the CGST is satisfied (assume) with his estimate.

In the Singapore case *Woon Wee Hao v Coastland Realty Pte Ltd* (1998) MSTC 7,357; (1998) SGST ¶72-002, the vendor granted the purchaser an option to purchase his share in a few residential properties. The option provided that the purchaser was to be liable for GST. After the purchaser had exercised the option, a dispute arose. To avoid jeopardising the sale, the vendor completed the sale and reserved in writing his right

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to claim GST from the purchaser. The purchaser subsequently contended that as the vendor was not registered for GST at the time the sale was completed, no GST was payable. The vendor argued that although he was not registered for GST at that time, he might have been liable to be registered. This is because the proceeds from the sale exceeded $1m and he might be selling other properties within the next 12 months.

The High Court held that the purchaser was not liable to pay GST. Only GST-registered persons can charge and collect GST. The vendor's liability to be registered, if any, would, at the earliest date, arise at the end of the quarter in which the sale was completed. Until the vendor was registered, he could not collect GST on his sales or claim GST on his purchases. The sale of the vendor's share in the properties clearly took place before any liability on his part to pay GST arose.

It will be recalled that a non-GST registered person who is required to register for GST purposes is required to account for output GST to the IRAS on his standard-rated supplies made in the course or furtherance of his business (s 8(2)). As he is not allowed to collect GST, he will have to either bear the output tax himself or, if he wants to maintain his profit margin, "pass on" the output tax to his customers by charging them higher prices.

Anti-avoidance provisions

A person may attempt to avoid the liability to register under the GST Act by incorporating several businesses, each of which falls below the GST registration threshold. To counter such an attempt, anti-avoidance provisions authorise the CGST to issue a direction to the persons carrying on the various activities of the business, treating them as a "single taxable person carrying on the activities of (the) business described in the direction" (First Schedule, para 2).

NLEs — determining the liability to register for GST

As mentioned in ¶21-120, a NLE (eg partnership or society) can be GST-registered. Because it lacks legal capacity, a GST-registered NLE may hold goods, IPRs or licence to use IPRs (collectively "property") that it uses for its business only through a legal entity (eg partners of a partnership or a company). The legal entity acts as a bare trustee (see the meaning of a bare trustee in ¶21-120).

Before 1 January 2015, the GST Act was silent on the question whether the NLE is required to account for GST on supplies of such property in the course of its business.

From 1 January 2015, an NLE will be required to account for GST on such supplies made by its bare trustee as if the NLE has made the supplies itself. An NLE will also be required to take into account such supplies in determining whether it has crossed the $1m threshold and is thus required to register for GST (the new s 10A inserted by the *GST (Amendment) Act 2014*).

¶21-420 Voluntary registration

A person who is not liable to register for GST may nevertheless request GST registration if he satisfies the CGST that he:

(a) makes taxable supplies, or

(b) is carrying on a business and intends to make such supplies in the course or furtherance of that business, or

(c) makes exempt supplies of financial services under para 1 of the Fourth Schedule where such services are international services under s 21(3) (First Schedule, para 8(1)).

(See IRAS e-Tax Guide "GST: Do I need to Register?", published on 8 October 2014, which includes the contents of the previous e-Tax Guide "GST: Legislative Amendment to Paragraph 8(1) of First Schedule to the GST Act", published on 1 June 2003.)

The voluntary registration of a person is at the discretion of the CGST, who may impose conditions if he thinks fit.

Voluntary registration may also be sought by any person who makes:

(a) supplies outside Singapore which would be taxable supplies if made in Singapore

(b) other supplies outside Singapore that the Minister may specify in the regulations, or

(c) supplies which s 37 ("Goods under Customs Control") or regulations made under s 37A (the ACMT provisions) provide are to be disregarded for GST purposes and which would otherwise be taxable supplies (First Schedule, para 9(1)).

To qualify for voluntary registration, the applicant:

(a) must have a business establishment in Singapore or his usual place of residence in Singapore, and

(b) does not make and does not intend to make taxable supplies (First Schedule, para 9(2)).

These conditions apply, for example, to a person who makes supplies outside Singapore through an international procurement office in Singapore. The supplies are out-of-scope and so he is not required to register for GST purposes, but he may have incurred GST for the rental of his office (which qualifies as a business establishment) in Singapore. The rental of such property, being commercial property, is standard-rated. The person may therefore choose to register in order to claim the input GST.

By contrast, the conditions for voluntary GST registration listed above (under the First Schedule, para 8(1)) apply to a different group of traders, eg a person who makes taxable supplies, or a person who makes exempt supplies of financial services that qualify for zero-rating too.

GAQ v CGST [2014] SGGST 1

In this 2014 case, the GST Board of Review held that supplies of financial services (exempt supplies) that also qualify as international services (zero-rated supplies) are not to be regarded as zero-rated supplies (and therefore taxable supplies) for the purpose of determining whether the appellant was required to register for GST. Such supplies are therefore excluded in applying the $1m threshold for compulsory GST registration.

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The appellant was incorporated in Singapore and has been carrying on the business of proprietary trading in securities and financial instruments. The CGST had allowed the appellant's application to be voluntarily registered from 10 July 2012. The CGST however made the decision not to backdate the appellant's effective date of GST registration to sometime in 2007 on the basis that the appellant was not permitted to include supplies of financial services (exempt supplies) that were also supplies of international services (zero-rated supplies) in computing the value of taxable supplies for the purpose of assessing whether the value exceeded or would have exceeded the $1m threshold. The issue was whether the CGST's refusal to backdate was supported in law.

One of the appellant's arguments was that s 21(2) provided that the zero-rating status of a supply is to prevail over its exempt status; the supplies in question therefore ought to be regarded as zero-rated (and therefore taxable) supplies also for the purpose of determining the appellant's liability to register. In support of this argument, the appellant referred to the expression "... or would be zero-rated if he were a taxable person..." in para 15(1) of the First Schedule. The Board however noted that s 21(2) applies to a taxable person as an antecedent condition. As the issue was precisely whether the appellant, although not GST-registered at the relevant time, was required to register (and was thus a "taxable person"), the appellant's argument was circular. The Board also ruled that the insertion in 2003 of the provisions of s 8(1)(a)(ii)(A) of the First Schedule (which allows a person who makes such supplies to register voluntarily) supported the CGST's position; the appellant had not rebutted the presumption that the Parliament shuns tautology and does not legislate in vain.

For completeness, s 8(2) and s 21(2), together with para 15(1) of the First Schedule, are reproduced below:

> "8(2) A person is a taxable person for the purposes of this Act while he is or is required to be registered under this Act.
>
> 21(2) Where a taxable person supplies goods or services and the supply is zero-rated, then, whether or not tax would be chargeable on the supply apart from this section –
>
> (a) no tax shall be charged on the supply; but
>
> (b) it shall in all other respects be treated as a taxable supply,
>
> and accordingly the rate at which tax is treated as charged on the supply shall be nil.
>
> First Schedule, paragraph 15(1)
>
> 15.(1) Notwithstanding the preceding provisions of this Schedule, where a person who makes or intends to make taxable supplies satisfies the Comptroller that any such supply is zero-rated or would be zero-rated if he were a taxable person, the Comptroller may, if he thinks fit and on that person's request, exempt him from registration until it appears to the Comptroller that the request should no longer be acted upon or is withdrawn."

¶21-430 Group, divisional and partnership registration

Group registration

The GST Act provides that members within a group may apply in writing to the CGST to be treated as one group for GST purposes. The principal advantage of group registration is that intra-group transactions are not subject to GST.

Two or more taxable persons are eligible to be treated as members of a group if each taxable person is resident in Singapore or has an established place of business in Singapore and:

(a) one of them controls each of the others

(b) one person (whether a body corporate or an individual) controls all of them, or

(c) two or more individuals carrying on a business in partnership control them all (reg 4 of the GST (General) Regulations).

From 1 May 2008, a person not resident in Singapore or not having an established place of business in Singapore can be regarded as part of a group if any one of the following additional criteria is satisfied:

(a) it has an annual turnover of at least $1m

(b) it is listed on a securities exchange established in or outside Singapore

(c) it is a subsidiary of a body corporate that satisfies the above criterion (a) or (b), or

(d) it is financed by an entity (as part of its venture capital investment business) that satisfies the above criterion (a) or (b).

The CGST has discretion in approving an application for group registration (subject to conditions). The CGST may refuse registration if he thinks it is necessary for the protection of revenue (reg 3 of the GST (General) Regulations).

The CGST may terminate a group registration by serving notice to each member of that group. However, before terminating a group registration, the CGST must first be satisfied that:

(a) a taxable person has at any time ceased to satisfy any of the requirements for eligibility for group registration

(b) a taxable person has failed to comply with any condition or requirement imposed by the CGST

(c) the members of the group provided false, misleading or inaccurate declaration or information in their application for group registration, or

(d) it is necessary for the protection of the revenue (reg 6 of the GST (General) Regulations).

(See IRAS e-Tax Guide "GST: General Guide on Group Registration", published on 30 September 2013.)

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Divisional registration

The GST Act also provides for divisional registration.

Under divisional registration, where the business of a taxable person is carried on in one or more divisions, the CGST may approve his application for any such divisions to be registered separately for GST purposes (s 32; reg 3–8 of the GST (General) Regulations). Conditions apply.

(See IRAS e-Tax Guide "GST: Divisional Registration", published on 30 September 2013.)

Partnership registration

A partnership is required to register for GST in the name of the firm (s 31). This avoids the need for partnerships to re-register each time there is a change in the partnership. Notwithstanding this, the IRAS has to be notified of any partnership changes.

¶21-440 GST de-registration

A GST-registered person who ceases to make taxable supplies is required to notify the CGST in writing within 30 days from the date of cessation. The CGST will terminate the registration if he is satisfied that the GST-registered person is no longer liable to be registered (First Schedule, para 10–14). However, the CGST may refuse to cancel a voluntary registration if:

- he is not satisfied that the person has ceased to make taxable supplies, or
- he thinks it is necessary to protect revenue.

RELIEFS

¶21-510 Zero-rating

The zero-rated supplies of goods and services are subject to GST at 0%. The suppliers of these goods and services are entitled to obtain credits or refunds for GST paid on purchases of inputs used in the making of those supplies. Exports of goods and international services are zero-rated (s 21).

Exports of goods

Exports of goods are zero-rated subject to any conditions imposed by the Minister or the CGST (including those stipulated in the IRAS e-Tax Guide "GST: Guide on Exports", revised on 31 December 2013). Prior approval of the CGST is generally required unless stipulated in the e-Tax Guide (s 21(6) and 21(7); reg 105 of the GST (General) Regulations).

Chapter 21

If goods that are supposed to have been exported are subsequently found in Singapore, or if there has been a breach of the conditions imposed in relation to those goods, the CGST is authorised to impose GST on the taxable person as well as to seize and forfeit the goods (s 21(8)).

(See IRAS e-Tax Guide "Guide on Exports", revised on 31 December 2013.)

International services

Section 21(3) contains a list of international services (further details can be found in the GST (International Services) Order). International services are zero-rated to keep Singapore internationally competitive and to ensure that GST is levied on domestic not overseas consumption. They include, very broadly:

- services connected with international transportation including arranging and insuring of such transportation (s 21(3)(a), 21(3)(b) and 21(3)(c))
- hiring of transport for use outside Singapore (s 21(3)(d))
- services supplied directly in connection with land or any improvement thereto situated outside Singapore (s 21(3)(e))
- services supplied directly in connection with goods situated outside Singapore when the services are performed (s 21(3)(f))
- services supplied directly in connection with goods for export outside Singapore and supplied to a person who belongs in a country outside Singapore at the time the services are performed (s 21(3)(g))
- prescribed financial services supplied directly in connection with goods for export outside Singapore (s 21(3)(h))
- cultural, artistic, sporting, etc, services performed outside Singapore (s 21(3)(i))
- services supplied:
  - (i) under a contract with a person who belongs in a country outside Singapore, and
  - (ii) which directly benefit a person who belongs in a country other than Singapore and who is outside Singapore at the time the services are performed (s 21(3)(j))
- prescribed services supplied:
  - (i) under a contract with a person wholly in his business capacity (and not in his private or personal capacity) and who in that capacity belongs in a country outside Singapore, and
  - (ii) which directly benefit a person wholly in his business capacity (and not in his private or personal capacity) and who in that capacity belongs in a country other than Singapore (s 21(3)(k))
- prescribed services in connection with the handling of ships or aircraft; or the handling or storage of goods carried in any ship or aircraft (s 21(3)(l))
- pilotage, salvage or towage services performed in relation to ships or aircraft (s 21(3)(m))
- services comprising the surveying of any ship or aircraft or the classification of any ship or aircraft for the purposes of any register (s 21(3)(n))
- the supply (including the letting on hire) of any ship or aircraft (s 21(3)(o)) (see "Zero-rating for the aerospace industry" below)
- prescribed services comprising the repair, maintenance, broking or management of any ship or aircraft (s 21(3)(p)) (see "Zero-rating for the aerospace industry" below)

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- prescribed international telecommunication services (s 21(3)(q))
- certain trust services (s 21(3)(r); for conditions, see Fourth Schedule to the GST (International Services) Order)
- services supplied:
  - (i) under a contract with a person who belongs in a country outside Singapore, and
  - (ii) which directly benefit a person who belongs in a country other than Singapore,

  relating to the co-location in Singapore of computer server equipment belonging to the person referred to in (i) or (ii) (s 21(3)(s))
- prescribed services in connection with the provision of an electronic system relating to the import of goods into or the export of goods out of Singapore (s 21(3)(t))
- advertising services for media sales where circulation is outside Singapore (s 21(3)(u))
- the supply (including the letting on hire) of any air container or sea container used or to be used for the international transportation of goods (s 21(3)(v)) (from 1 January 2009) (*Note:* the GST chargeable for this supply during the period 1 April 2007 to 31 December 2008 was granted Minister's remission)
- prescribed services comprising the repair, maintenance or management of any air container or sea container used or to be used for the international transportation of goods (s 21(3)(w)) (from 1 January 2009)
- the supply (including the letting on hire) of qualifying aircraft parts that are certified as airworthy (s 21(3)(x)), and
- prescribed services supplied directly in connection with prescribed goods:
  - (i) under a contract with a person who belongs in a country outside Singapore, and
  - (ii) which directly benefit a person who belongs in a country other than Singapore,

  if, at the time the prescribed services are performed, the prescribed goods are, for example, at an approved warehouse (s 21(3)(y) (from I January 2012)).

Sections 21(3)(j), 21(3)(k), 21(3)(s) and 21(3)(y) contain the terms "under a contract with" and "directly benefit".

Section 21(4A) states that, for purposes of these four paragraphs, the person with whom the contract is made and the person who directly benefits from the services may be the same person or different persons.

Chapter 21

IRAS clarification on meaning of "directly in connection with" and "directly benefit"

The IRAS has published its interpretation of the term "directly in connection with" for purposes of s 21(3)(e), 21(3)(f), 21(3)(g) and 21(3)(y) (see e-Tax Guide "GST: Clarification on 'Directly in Connection With' and 'Directly Benefit'", published on 31 March 2014).

The IRAS' position is that:

- the adverb "directly" in the term "directly in connection with" emphasises that there must be a clear and direct nexus between the two subject matters that makes the relationship a sufficiently close one

- the following services would be regarded as supplied directly in connection with goods or land, which must be identifiable in all cases:

  (a) the supply involves physical work done on the goods or land in a way that changes or affects the goods or land, eg installation, repair or modification of goods

  (b) the supply involves physical contact or interaction with the goods or land but does not change the goods or land physically, eg transportation of goods from one place to another

  (c) the supply establishes the physical attributes (such as quantity, size or value) of the goods or land, eg testing and analysis of goods to ensure safety standards of the goods

  (d) the supply affects (or its purpose is to affect) or protects the nature or value (including indemnity against loss) of goods or land, eg fire insurance for goods and property, and

  (e) the supply affects, or proposes to affect, the ownership of the goods or land including any interest in or right over goods or land, eg auctioning services for goods.

The IRAS also sets out how it would apply the term "directly benefit" for purposes of s 21(3)(j), 21(3)(k), 21(3)(s) and 21(3)(y) (among other provisions):

(i) the IRAS will rely on generally established contract law and case law to determine whether a contract exists

(ii) the IRAS will consider all recipients of the services who are stipulated in a contract, to the exclusion of other persons, to "directly benefit" from the services supplied. If there is no such contractual provision, the IRAS' view is that the condition of "directly benefit" is satisfied if the person is able to receive the services directly but not satisfied if the person cannot benefit from the services without another person receiving the services first, and

(iii) the IRAS takes the view that the word "direct" does not connote magnitude; the supply of services "directly benefits" a person who receives the services even if it can be shown that the person only consumes a small proportion of the services relative to the other beneficiaries.

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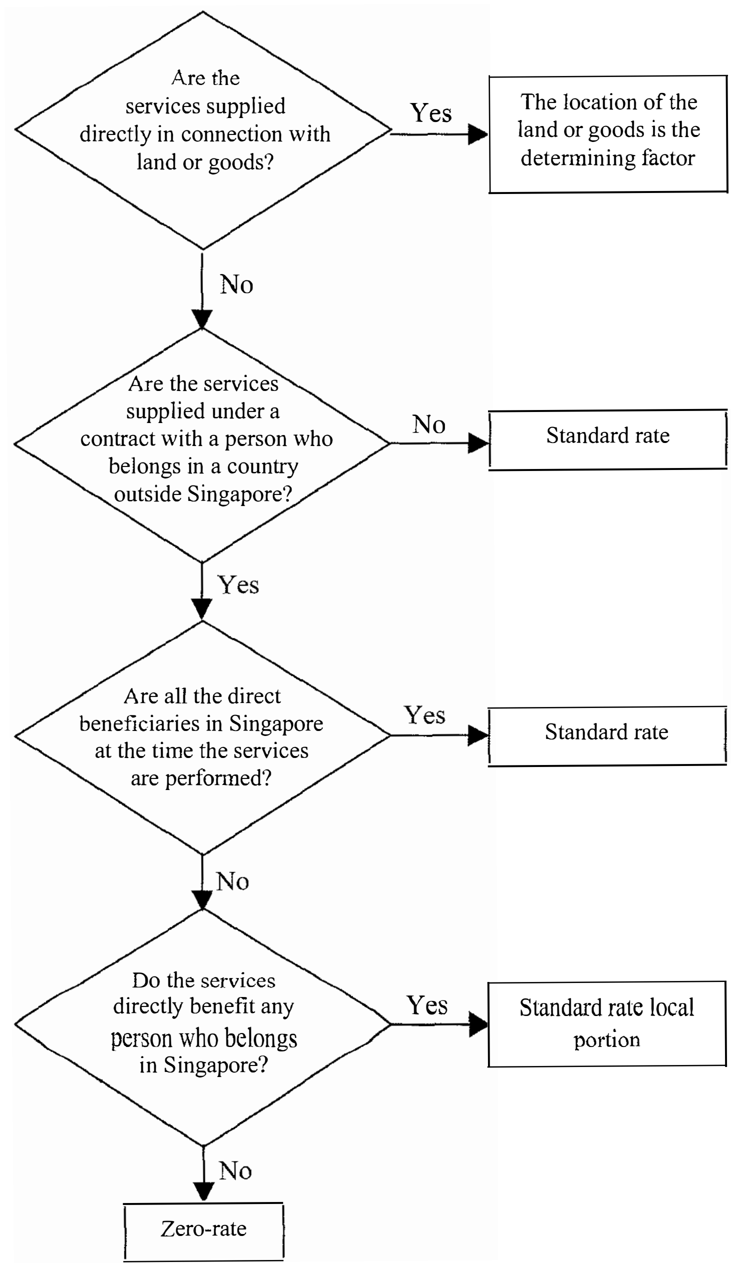
The decision tree for determining whether zero-rating applies under s 21(3)(j), read with the above e-Tax Guide, is as follows:



Zero-rating of supply of certain tools, machinery and prototypes (s 21A)

The following supply by a taxable person to a person belonging in a country outside Singapore is zero-rated (s 21A):

- prescribed tools or prescribed machinery used in the manufacture of goods
- services directly in connection with such tools or machinery, and
- any prototype of such tools or machinery.

"Prescribed tools or prescribed machinery" is any tool or machinery which is:

(a) integral to the manufacture of the goods, and

(b) highly customised or specialised in nature for the sole purpose of the manufacture of the goods (reg 106 of the GST (General) Regulations).

Zero-rating the supply of such tools or machinery used in the manufacture of goods for export to overseas customers and related services would help local GST-registered manufacturers stay competitive. Overseas customers will not be charged with GST on tools or machinery used in the manufacture of goods for export and related services.

To be zero-rated, the supplies must satisfy all seven conditions listed in the IRAS e-Tax Guide "GST: Zero-rating of Tools or Machine Used in Manufacturing of Goods for Export to Overseas Customers", published on 31 December 2013. The e-Tax Guide also deals with the tax treatment of the importation of tools or machinery belonging to an overseas customer for use in the manufacturing process in Singapore.

Zero-rating of supplies relating to goods to approved taxable person in shipping or marine industry (s 21B)

The Minister may by regulations, in relation to a supply relating to goods for a prescribed purpose made by any taxable person to a taxable person in the shipping or marine industry who is approved by the CGST, permit the supply to be zero-rated. Zero-rating will apply however only to the sale or rental of the goods, and not to all supplies relating to the goods (s 21B(1)).

Zero-rating of grant or assignment of lease, tenancy or licence to occupy land (s 21C)

The grant or assignment by any taxable person of a lease, tenancy or licence to occupy land where the lease, tenancy or licence:

(a) is granted or assigned under a contract with a person who belongs in a country outside Singapore, and

(b) directly benefits a person who belongs in a country other than Singapore,
is zero-rated if:

  (i) the taxable person has made an application to the CGST and he has approved the application for a warehouse or other premises to be an approved warehouse

  (ii) the whole of the land which is the subject of the lease, tenancy or licence is part of the approved warehouse, and

  (iii) the land which is the subject of the lease, tenancy or licence is used by the taxable person in his business of storing prescribed goods other than the goods of the taxable person.

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Zero-rating for the aerospace industry

Up to 30 March 2009, zero-rating was allowed for:

(i) sale and lease of a qualifying aircraft, ie one that is not used for recreational or pleasure purposes

(ii) sale of aircraft components which are exported, and

(iii) maintenance, repair and overhaul (MRO) works that are performed directly on a qualifying aircraft.

From 1 April 2009, zero-rating is extended to cover the sale, maintenance or repair services of aircraft components or systems as long as they form part of a qualifying aircraft. In addition, the definition of "qualifying aircraft" has been expanded to include any aircraft (including private aircraft) which is wholly used, or intended to be wholly used, for international transportation of goods or passengers.

Approved traders in the aerospace industry can now import aircraft components or systems for qualifying aircraft without GST under the Approved Import GST Suspension Scheme.

(See IRAS e-Tax Guide "GST Guide for the Aerospace Industry", published on 31 March 2014.)

Hand-carried exports scheme

Implemented on 1 April 2009, the hand-carried exports scheme is compulsory for all GST-registered persons who export their goods by hand-carrying them out of Singapore via Changi International Airport and wish to zero-rate the supplies of such goods. For zero-rating to be granted, documentary evidence is required.

(See reg 105A of the GST (General) Regulations and IRAS e-Tax Guide "GST: Guide on Hand-Carried Exports Scheme" (3rd Ed), published on 30 September 2013.)

Zero-rating for the marine industry

Zero-rating of GST for the marine industry is allowed for:

(a) sale and lease of a qualifying ship

(b) sale of stores and merchandises to ships that are travelling to or from a destination outside Singapore (ie the ship calls on a port outside Singapore)

(c) transport of goods or passengers via a ship from a place outside Singapore to another place outside Singapore

(d) transport of goods or passengers via a ship from a place in Singapore or to a place in Singapore, and substantially outside Singapore

(e) sale of goods for use or installation on ships if there is sufficient documentary evidence to prove that such goods will be exported

(f) goods (including stores and merchandises) supplied for use on board or for installation on a qualifying ship, regardless of whether the ship calls on a port outside Singapore, and

(g) stores supplied to and merchandises for sale on board a qualifying aircraft.

(See IRAS e-Tax Guide "GST Guide for the Marine Industry — 2010 Budget Changes" (4th Ed), published on 10 January 2013.)

Approved Marine Customer Scheme (AMCS)

Before 1 October 2011, the sale and rental of goods (including stores and merchandise) for use or installation on a qualifying ship under certain scenarios could be zero-rated if the supplier maintains the requisite documentary proof. Zero-rating also applies to repair and maintenance services performed on a ship and ship parts or components if some conditions are satisfied.

From 1 October 2011, approved marine customers are allowed under the AMCS to buy or rent goods for use or installation on internationally bound commercial ships at 0% GST. This means that the GST-registered supplier will be able to zero-rate the supply of such goods to approved marine customers without having to maintain the requisite documentary proof. It has been clarified that the zero-rating of GST for such goods provided for specified use or installation on ships or to persons approved under the AMCS applies only to the sale or rental of the goods, and not to all supplies relating to the goods (s 21(6A), 21(6B) and s 21B(1) as amended). This tax change does not reflect any policy shift and it takes effect from 1 January 2015.

Zero-rating is also extended to repair or maintenance services performed on ship parts or components which are delivered to shipyards in Singapore or approved marine customers. To qualify for the AMCS, the applicant must, among other conditions:

- be a GST-registered business
- have an annual turnover of at least $1m, and
- is principally engaged in the business of ship owner or ship manager.

(See reg 106A of the GST (General) Regulations and IRAS e-Tax Guide "GST Guide for the Marine Industry — 2011 Budget Changes" (4th Ed), published on 28 January 2013.)

Zero-rating for specialised storage and other value-added services

Before 1 October 2011, services performed on goods stored in warehouses in Singapore were standard-rated unless they were supplied to overseas persons and the goods were exported. Where goods were stored for an extended period of time, businesses faced difficulty in establishing that the goods would be exported when they billed their overseas customer. The provision of space for the warehouse operator's business of storing goods was also standard-rated.

To promote the use of specialised storage facilities and other supporting services such as valuation and conservation, a new scheme effective from 1 October 2011 was introduced. Zero-rating is allowed for specified services supplied to overseas persons, if they are performed on certain goods kept in approved warehouses in Singapore.

To qualify for the zero-rating scheme:

- the specialised warehouse must have more than 90% overseas customers, and
- more than 90% of qualifying goods removed from the warehouse are exported.

(See reg 106B of the GST Guide on (General) Regulations and IRAS e-Tax Guide "GST: Specialised Warehouse Scheme and Zero-rating of Supplies", published on 23 October 2012.)

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¶21-520 Retail export scheme (tourist refund scheme or TRS)

A retail export scheme allows GST charged on goods sold to tourists to be refunded to them by the supplier of the goods when the goods leave the country or via a central refund agency such as Global Refund or Premier Tax Service. The supplier or the refund agency will, in turn, claim from the IRAS the refunded amount (reg 48–51 of the GST (General) Regulations). This scheme has the effect of zero-rating supplies of goods sold by GST-registered retailers to tourists. The rationale is that such goods are actually exports.

The GST TRS was formerly available only to tourists departing Singapore by air, from the Changi International Airport and Seletar Airport.

From January 2013, the GST TRS has been extended to goods brought out of Singapore on international cruises (excluding cruises-to-nowhere, round-trip cruises and regional ferries) via the Singapore Cruise Centre at Harbourfront and Marina Bay Cruise Centre Singapore (MBCCS) at Marina South. The extension of the scheme is to capitalise on the growth of international cruise tourism.

A tourist departing Singapore on an international cruise must satisfy the existing GST TRS conditions to qualify for the GST refund. In addition, the tourist will be required to:

(i) declare that Singapore is his final exit point using his cruise itinerary as documentary proof of his departure, and

(ii) commit that he will not return to Singapore within 48 hours.

(See IRAS e-Tax Guides "GST Guide for Visitors on Tourist Refund Scheme" (3rd Ed), published on 14 November 2014, "GST Guide for Retailers Participating in Tourist Refund Scheme" (3rd Ed), published on 14 November 2014 and "GST Guide on the Electronic Tourist Refund Scheme (eTRS)" (3rd Ed), published on 14 November 2014.)

Under s 83E, the GST or an authorised person has the power to seize goods and arrest a person without warrant in cases of suspected TRS fraud (see also ¶21-720).

¶21-530 Exempt supplies

The sale and lease of residential property and the supply of financial services that are listed in the Fourth Schedule are exempt from GST (s 22). No GST is to be charged on exempt supplies of goods and services. The suppliers are not entitled to recover any input tax on supplies attributable to the making of exempt supplies (on the other hand, the supplier of zero-rated supplies can recover the input tax on supplies attributable to the making of zero-rated supplies).

Financial services that are exempt supplies include:

- the operation of any current, deposit or savings account (Fourth Schedule, para 1(a))
- the provision of any loan, advance or credit (Fourth Schedule, para 1(g)), and
- the provision, or transfer of ownership, of a life insurance contract (Fourth Schedule, para 1(l)).

In determining whether a service is an exempt "financial service", the focus is on the supply of services by the supplier to the recipient and not the services provided by the recipient to its own customers.

In *CIR v Databank Systems Limited* (1990) 12 NZTC 7,227, it was held that the general bank accounting and processing services provided by Databank to four trading banks were not "financial services" within the meaning of s 3(1) of the New Zealand GST Act and were thus not exempt from GST. The Privy Council observed that whereas the services provided by the trading banks to their customers were "financial services", Databank provided the trading banks not with "financial services" but with computing and other services that enabled those banks to provide "financial services" to their customers.

Investment precious metals (IPM)

From 1 October 2012, the import and supply of precious metals which qualify as IPM are also exempt for GST purposes. The supply (and import) of IPM therefore forms a third category of exempt supplies in Singapore (in addition to the sale/lease of residential property and the supply of financial services listed in the Fourth Schedule).

This tax change is made to recognise that IPM are essentially financial assets, just like stocks, bonds and other actively traded financial instruments which are GST-exempt, and to promote the development of IPM refining and trading in Singapore. IPM refers to gold, silver or platinum in the form of a bar, ingot and wafer, and to gold, silver or platinum coins. Similar criteria for GST exemption apply for an IPM bar, ingot and wafer, and for an IPM coin. The supply of IPM for export continues to be zero-rated, subject to documentary evidence.

To provide certainty to businesses, only coins that are prescribed under the Fourth Schedule to the GST Act qualify as IPM coins. Examples of non-IPM coins are proof and numismatic coins that are usually traded at prices largely determined by their rarity, finishing and beauty. The import and supply of non-IPM coins continue to be taxable.

(See IRAS e-Tax Guide "GST: Guide on Exemption of Investment Precious Metals (IPM)" (3rd Ed), published on 4 November 2013.)

Approved Refiner and Consolidator Scheme (ARCS)

In tandem with the changes relating to IPM, the ARCS was introduced from 1 October 2012.

Essentially, an approved ARCS person is identified and accorded status as either an approved refiner or an approved consolidator.

An approved refiner is a refiner that is approved by the IRAS under the ARCS and that:

(i) processes or converts goods into IPM or extracts IPM from goods, and/or

(ii) mints coins that are IPM.

An approved consolidator consolidates or aggregates materials containing gold, silver or platinum (eg scrap materials) belonging to itself or overseas persons for the supply or delivery to specified refiners to be refined into IPM, and is approved by the IRAS under the ARCS.

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An approved ARCS person enjoys the following benefits (detailed conditions apply):

(a) GST suspension on importation of goods

(b) Waiver of GST payment on goods supplied between ARCS persons, and

(c) Special input tax recovery rules (as compared to the normal input tax recovery rules that would otherwise have applied because of the GST exemption of IPM).

These measures ease cash flow and compliance of approved refiners and approved consolidators in the payment of input GST on import and purchase of raw materials.

The *GST (Amendment) Act 2013* also expands the definition of "refine" in s 37B(2) to include changing an IPM or a precious metal from one form to another (eg from granules to a bar), or to a different level of purity.

(See IRAS e-Tax Guide "GST: Approved Refiner and Consolidator Scheme (ARCS)" (4th Ed), published on 10 December 2014.)

¶21-540 Other GST relief rules

Other schemes that grant relief from GST include:

(a) Bad debt relief (s 25; reg 82–90 of the GST (General) Regulations)

Relief for GST paid may be claimed where a bad debt has been written off.

(b) Second-hand goods scheme (s 23; reg 80–81 of the GST (General) Regulations)

Under this scheme, GST is payable only on the difference between the purchase price and the sale price of the second-hand article.

(c) Import relief (s 24; GST (Imports Relief) Order)

Examples of import relief from GST include:

- import of goods stored in a free trade zone
- temporary imports where the goods concerned (goods must not be liquor or tobacco) will be re-exported within three months from the date of importation (see note below)
- postal and air imports by a bona fide traveller up to $300, depending on his age and the time he spent outside Singapore (see also note below), and
- imports for personal use for items up to $300.

Note:

From 1 April 2012, the temporary import relief period was extended to six months.

Moreover, from 1 April 2012, the GST import relief for new articles brought in by inbound travellers is capped at $600 (where the time spent abroad is 48 hours or more) and $150 (where the time spent abroad is less than 48 hours). The age of the traveller no longer affects the amount of relief (GST (Imports Reliefs) (Amendment) Order 2012).

(d) Major Exporter Scheme (MES) (reg 45 of the GST (General) Regulations)

The MES seeks to alleviate the administration and cash flow problems of businesses that:

- import non-dutiable goods for re-export, or
- import raw materials for processing in Singapore before exporting the finished products.

(For details including the suspension of GST from 1 January 2015 under s 33B on re-importation of goods previously sent abroad by the MES trader for value-added activities belonging to the MES trader's local customer or GST-registered overseas customer, see IRAS e-Tax Guide "GST: Major Exporter Scheme" (2nd Ed), published on 10 December 2014. See also "Zero GST Warehouse Scheme" below.)

(e) Zero GST Warehouse Scheme (s 37; reg 94–103 of the GST (General) Regulations)

The Zero GST Warehouse Scheme is administered by Singapore Customs for companies that wish to suspend GST on importation of non-dutiable goods. GST is waived on goods removed from Zero GST warehouses by persons under the MES and the Approved Third Party Logistics Company (Approved 3PL Company) Scheme.

(f) Approved 3PL Company Scheme

Under this scheme, qualifying 3PL companies do not have to:

(a) pay GST for import of goods belonging to them or their overseas principals, and

(b) charge GST when the goods are moved to customers approved under the MES or to other approved 3PL companies.

(See IRAS e-Tax Guide "GST: Approved Third Party Logistics Company Scheme" (6th Ed), published on 10 January 2012.)

(g) Approved Marine Fuel Trader Scheme (reg 45B of the GST (General) Regulations)

This scheme applies to the bunkering-related business. GST need not be charged on the sale of approved marine fuel oil in Singapore to approved businesses (ie Marine Fuel Traders). The import of marine fuel oil would still attract GST unless the importer is an approved business importing non-dutiable fuel oil under the MES.

(See IRAS e-Tax Guide "GST: Approved Marine Fuel Trader (MFT) Scheme" (3rd Ed), published on 30 September 2013.)

(h) Exemption of GST and duty for a specified quantity of wine for approved wine exhibitions and conference events

From 1 April 2009, GST and duty are exempted for a specified quantity of wine for use at approved wine exhibitions and conference events. This incentive was introduced to promote wine trading activities and help develop the wine industry in Singapore. The exemption is granted on up to three bottles of wine per label per day for each exhibitor and the main conference organiser at approved wine exhibitions and conference events.

(Before 1 April 2009, GST and duty were payable for wine used at wine exhibitions and conference events.)

(See Singapore Customs website at www.customs.gov.sg.)

(i) Suspension of GST and duty on goods temporarily removed from a Zero GST or licensed warehouse for auctions and exhibitions

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From 1 April 2009, GST and duty are suspended on goods (including wine) temporarily removed from a Zero GST or licensed warehouse for auctions or exhibitions. This incentive was introduced to promote specialised storage facilities and auctions or exhibitions in Singapore. The suspension will apply even if the goods are sold during the auction or exhibition, provided the goods are returned to the warehouses subsequently.

(Before 1 April 2009, GST and duty were payable when such goods were removed from a Zero GST or licensed warehouse.)

(See Singapore Customs website at www.customs.gov.sg.)

(j) Import GST Deferment Scheme (IGDS)

The IGDS came into effect on 1 October 2010. Under the IGDS, an approved business is allowed to defer the payment of import GST until the submission of its monthly GST return. The IGDS helps ease the import GST cash flow for GST-registered businesses.

To qualify for the IGDS, the GST-registered business:

- must have good compliance records
- submits its GST returns on a monthly basis, and
- meets other conditions.

The import GST is deferred for at least one month and declared as a payable amount in the monthly GST return.

(Before 1 October 2010, import GST was payable on all goods brought into Singapore at the point of entry, unless import GST relief was granted or the goods were imported under import GST suspension schemes such as the MES.)

(For details including the suspension of GST from 1 January 2015 under s 33B on re-importation of goods previously sent abroad by the IGDS trader for value-added activities belonging to the IGDS trader's local customer or GST-registered overseas customer, see s 27A, 33B and IRAS e-Tax Guides "GST: Import GST Deferment Scheme" (2nd Ed), published on 10 December 2014, and "GST: Guide on Imports" (3rd Ed), published on 22 December 2014.)

RECOVERY OF GST

¶21-610 Input tax credits

Claim for input tax credits

Input tax is GST paid or payable on goods and services purchased. A registered person is entitled to recover, at the end of any prescribed accounting period and from the IRAS, the input tax on supplies and importation in that period that is attributable to, among others:

(a) taxable supplies, and

(b) supplies outside Singapore which would be taxable supplies if they were made within Singapore (s 20(2)).

NLEs — ability to claim input tax on supplies

As mentioned in ¶21-120, a NLE (eg partnership or society) can be GST-registered. Because it lacks legal capacity, a GST-registered NLE may hold goods, IPRs or licence to use IPRs (collectively "property") that it uses for its business only through a legal entity (eg partners of a partnership or a company). The legal entity acts as a bare trustee (see the meaning of a bare trustee in ¶21-120). Before 1 January 2015, a NLE is not able to claim GST incurred on the acquisitions of property made via a bare trustee as the NLE is not itself the legal owner.

To put NLEs on par with legal entities, from 1 January 2015, a NLE will be able to claim GST incurred on acquisitions (eg a purchase) of such property as if the NLE is itself the legal owner (s 19(14A)).

Singapore-listed real estate investment trusts

Singapore-listed real estate investment trusts (REITs) are able to recover the GST they incur in the set-up of their special purpose companies (SPCs) to hold overseas non-residential property, subject to certain conditions.

This GST remission, which would have expired on 17 February 2010, has been renewed for another five years from 18 February 2010 to 31 March 2015 (both dates inclusive).

(See IRAS e-Tax Guide "GST: Concession for REITs and Qualifying Registered Business Trusts Listed in Singapore", published on 30 September 2013.)

Qualifying listed Registered Business Trusts (RBT)

Currently, qualifying listed RBTs in the sectors of infrastructure, ship leasing and aircraft leasing are granted a GST remission to claim input tax on their business expenses regardless of whether they hold the underlying assets directly or indirectly through multi-tiered structures such as Special Purpose Vehicles (SPVs) or sub-trusts.

This GST remission, which would have expired on 17 February 2010, has been extended for another five years from 18 February 2010 to 31 March 2015 (both dates inclusive).

2015 Budget announcement

The GST concessions for Singapore-listed REITs and RBTs above will be extended till 31 March 2020.

In addition, to facilitate fundraising by these REITs and RBTs through SPVs, the GST concession will be enhanced to allow these REITs and RBTs to claim GST on expenses incurred to set up SPVs that are used solely to raise funds for the REITs or RBTs, and the SPVs do not hold qualifying assets of the REITs or RBTs, directly or indirectly. These REITs and RBTs will also be allowed to claim GST on the business expenses of such SPVs.

The enhancement will apply to GST incurred from 1 April 2015 to 31 March 2020.

IRAS will release further details by March 2015.

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Insurance policies entered into on or after 1 January 2007

In respect of insurance policies entered into on or after 1 January 2007, general insurers can claim the GST incurred in respect of:

(i) cash indemnities paid to non-GST registered policyholders under insurance contracts that are subject to GST, and

(ii) expenses incurred on claims on their policyholders' passenger cars.

Recovery of input GST for qualifying funds — 22 January 2009 to 31 March 2019

To promote fund management and administration services in Singapore, qualifying funds that are managed by a prescribed fund manager in Singapore are allowed to claim a substantial portion of their input GST on prescribed expenses incurred during the period from 22 January 2009 to 31 March 2014 (both dates inclusive). This concession has been extended for five years to 31 March 2019.

(Before 22 January 2009, services provided to a fund in Singapore were standard-rated whereas services provided to a fund outside Singapore were generally zero-rated. Singapore funds which were not GST-registered would incur higher business costs since they were unable to claim credit for the input GST on expenses. Singapore funds may not be required to register for GST purposes because of the exempt nature and character of their income (eg dividends and interest income)).

Claiming input tax credits for cash purchases

A GST-registered person who is claiming credit for input tax incurred for business purposes must have the following documents to support its claim:

- a tax invoice issued to a GST-registered person where the purchase value is at least $1,000, or
- a simplified tax invoice or a receipt where the purchase value is less than $1,000.

Penalties may be imposed for making incorrect GST declarations.

(See IRAS e-Tax Guide "GST: General Guide for Businesses", published on 8 October 2014.)

Blocked input tax

Regulations 26 and 27 of the GST (General) Regulations specifically prohibit the claims of input tax for certain expenses. The input tax for such expenses is said to be "blocked".

Input tax incurred by a taxable person in respect of any of the following is blocked (reg 26):

- club subscription fees (including joining, membership and transfer fees)
- medical and accident insurance premiums
- medical expenses (excluding expenses incurred on a workman employed by him which are obligatory under the *Work Injury Compensation Act* or a collective agreement)
- family benefits provided to the spouse, children or relatives of the employee, and
- transactions involving betting, sweepstakes, lotteries, fruit machines or games of chance.

Chapter 21

Input tax incurred by a taxable person on:

(i) the supply or importation of a motor car, or

(ii) the supply or importation of goods or supply of services used by him directly in connection with a motor car (eg petrol, repairs, etc)

is blocked (reg 27).

A "motor car" is defined in reg 25; it includes a private-registered car (S-plated or SZ-plated) but excludes (among others) a taxi, a motor car registered as a private car (eg school transport), and a motor car used by driving instruction schools.

Non-recovery of input tax

Input tax on supplies used in making exempt supplies is not recoverable. Additionally, if input tax is paid by a taxable person in respect of goods and services supplied to it partly for business purposes and partly for non-business purposes, the input tax credit is limited to that portion as is referable to the business use (s 19(4)).

Where:

(i) a claimant company under the income tax group relief scheme (see Chapter 9 at ¶9-100ff) is a GST-registered person and incurs input tax for the purposes of acquiring the qualifying deductions from a transferor company, and

(ii) the transfer qualifies as an excluded transaction (see ¶21-120),

the claimant company will not be able to claim the input tax incurred (such as on accounting services). This is because the qualifying deductions are not subsequently used to make taxable supplies.

(See IRAS e-Tax Guide "GST: Transfer of Business as a Going Concern and other Excluded Transactions", published on 3 March 2015.)

Repayment of input tax previously claimed

A taxable person is required to account for and repay to the CGST an amount equal to any input tax previously claimed if the taxable person (s 19(12)):

(a) has failed to pay his supplier the consideration or any part thereof for the supply of goods or services made by the supplier to him, and

(b) has credited the input tax relating to the consideration or the part thereof against his output tax.

Where the taxable person subsequently pays his supplier the whole or part of the consideration during the period specified in s 19(12), the taxable person is entitled to treat an amount equal to the input tax relating to the subsequent payment to the supplier as if it were input tax for the prescribed accounting period during which the taxable person made the subsequent payment (s 19(12A)).

Beneficial owner not entitled to input tax credit

In *JH v CGST* [2005] SGGST 1, the taxpayer was a GST-registered partnership in Singapore comprising four siblings. F, the wife of one of the siblings, bought a Housing & Development Board (HDB) shop property in 2001. The taxpayer used the property as a restaurant.

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The taxpayer claimed input tax charged on the supply of the property on the basis that F (although the legal owner) had held the property as trustee for it because it had paid the purchase consideration for the property, including the GST charged by the HDB. The taxpayer argued that, as the beneficial owner, it was therefore the "taxable person" to whom the supply of the property was made, within the meaning of s 19(3).

The Board of Review rejected the taxpayer's appeal, holding that nothing in the GST Act provided for input tax credit to be granted to the beneficial owner of land.

Pre-registration GST claims

Under current tax treatment, in general, GST-registered businesses can claim GST incurred on purchases of goods and services before GST registration ("pre-registration GST") only on the portion of goods and services used or to be used to make taxable supplies after GST registration. Where goods and services are used to make supplies straddling GST registration, or where goods are partially consumed before GST registration, businesses are required to apportion the pre-registration GST on those goods and services; they can claim only the portion attributable to taxable supplies made after GST registration.

2015 Budget announcement

To ease compliance, the claiming of pre-registration GST will be simplified to allow a newly GST-registered business to claim pre-registration GST in full on the following goods and services that are acquired within six months before the GST registration date:

a) goods held by the business at the point of GST registration, and
b) property rental, utilities and services, which are not directly attributable to any supply made by the business before GST registration.

For other purchases of goods and services prior to GST registration, including those acquired more than six months before the GST registration date, existing pre-registration GST claim rules will apply.

This change will take effect for businesses that are GST-registered from 1 July 2015.

IRAS will release details of the change by June 2015.

¶21-620 Exempt and partially exempt businesses

Businesses engaged exclusively in the making of exempt supplies are not entitled to any credit for the input tax charged by its own suppliers of goods and services.

Where a business makes taxable supplies (ie standard-rated and zero-rated supplies) and exempt supplies, there is a need to apportion the input tax credit. The amount of input tax that is creditable against output tax will be limited to the amount of the input tax that is attributable to the making of taxable supplies.

Incidental exempt supplies

Regulation 33 of the GST (General) Regulations lists the exempt supplies whose input tax (known as *exempt input tax*) is to be treated as attributable to taxable supplies. These supplies are commonly referred to as "incidental exempt supplies". Such supplies prescribed in the GST legislation include:

- the deposit of money

- the exchange of currency other than the supply of a note or a coin as a collector's item
- the issue, allotment or transfer of ownership of a debt security by the person who makes the first issue of such security
- the issue, allotment or transfer of ownership of an equity security by the person who makes the first issue of such security (eg a rights issue), and
- the provision of any loan, advance or credit to staff (eg interest).

The exempt supplies of a "tainted" business may, however, not be treated as taxable supplies. "Tainted" businesses include:

- banks, merchant banks, finance companies
- insurance companies or agents
- moneylenders or money-changers
- pawnbrokers
- debt factors
- credit card or charge card companies, and
- certain unit trusts.

The objective behind this "tainted business" category (reg 34 of the GST (General) Regulations) is to prevent essentially exempt businesses from gaining undue tax relief by claiming input tax on substantial expenses relating to the making of their exempt supplies.

In practice, the scope of incidental exempt supplies may not be restricted to those reflected in reg 33. Exempt supplies such as interest received from loans or cash pools to related companies in Singapore tend to qualify as incidental exempt supplies. The rationale for not legislating such supplies in reg 33 is perhaps that it is difficult and sometimes subjective to determine what constitutes incidental. For example, interest of $100,000 a year may be significant to a company whose annual revenues are only $1m but not significant to a company whose annual revenues comprise $100m. Alternatively, interest from a cash pool may be incidental to a multinational conglomerate whose primary business is manufacturing but it is arguably not incidental to a company that was set up to manage that cash pool. Prior IRAS approval is required before these non-reg 33 exempt supplies are designated as incidental (so-called "non-reg 33 incidental exempt supplies").

(See IRAS e-Tax Guide "GST: Guide on Non-Business Receipts — Business Tests and the Effect of Non-Business Receipts on Input Tax Claims", published on 30 September 2013.)

Illustration 4 shows the questions to be considered when claiming input tax credits in the case of "partially exempt" businesses.

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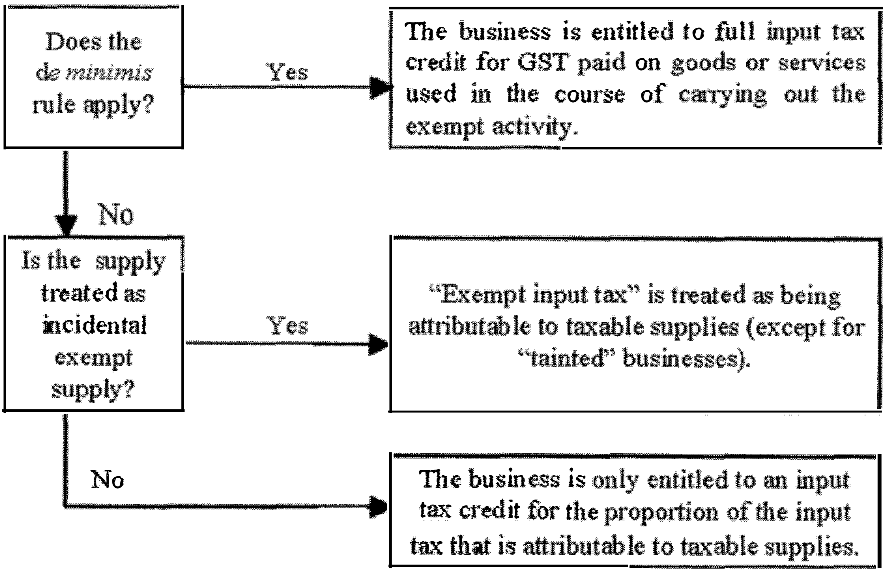
Illustration 4: Claims for input tax credits by partially exempt business



De minimis rule

Under the *de minimis* rule, if the total value of the exempt supplies made by a taxable person (during any prescribed accounting period or in any "longer period") is ***not more than both***:

- an average of $40,000 per month (from 1 April 2008), and
- 5% of the total value of all taxable and exempt supplies made in that period,

the taxable person is entitled to a full input tax credit for GST paid on any goods or services used in the course of carrying out the exempt activity (reg 28 and 36 of the GST (General) Regulations. Refer to reg 25(5), 25(6), 25(7) and 25(8) on how to determine the "longer period").

This rule reduces compliance costs for taxable persons who make exempt supplies to which little or no input tax is attributable. Without the rule, these persons will have to separately determine the exempt input tax.

Attribution of input tax

If the *de minimis* rule does not apply and the exempt supplies are not deemed to be taxable supplies, a business is only entitled to an input tax credit for such proportion of the input tax for the period as, in accordance with the regulations, is attributable to taxable supplies.

Regulation 29 of the GST (General) Regulations provides guidance on the "attribution" of input tax to either taxable supplies or exempt supplies. Briefly, if a business makes both taxable and exempt supplies, the following steps will need to be undertaken:

Step 1 Identify and categorise separately the taxable and exempt supplies.

Step 2 For the exempt supplies, ascertain whether they are below the *de minimis* threshold or are deemed to be taxable supplies; in either case, apportionment will not be required.

Step 3 Identify the following types of costs:

C1:	Costs directly attributable to making exempt supplies.	Input tax on these exempt supplies is *prima facie* not recoverable.
C2:	Costs that relate directly to making taxable supplies.	Input tax is recoverable by the business.
C3:	Costs that cannot be directly attributed to making either exempt or taxable supplies (eg general overhead items like electricity, audit fees, telephone, etc)	Input tax is to be apportioned between the exempt and taxable supplies.

Step 4 The apportionment of the input tax on C3 (ie costs that cannot be directly attributed to either exempt or taxable supplies) should be made by applying the following formula:

$$\text{Input tax on C3} \times \frac{\text{Value of taxable supplies}}{\text{value of all supplies}}$$

The denominator in the above formula excludes any exempt supply of financial services made by the claimant where such supply is incidental to one or more of his business activities (reg 29(3) of the GST (General) Regulations). The denominator also excludes out-of-scope supplies. The result given by the formula is to be expressed in percentage terms and if the result is not a whole number, it is to be rounded off to the nearest whole number.

Where input tax is incurred on goods and services in the development of land and construction of a building, the applicable attribution formula is found in reg 29(2)(d)(ii) of the GST (General) Regulations.

Step 5 The amount of input tax that the above formula apportions to the taxable supplies is "attributed" by reg 29 of the GST (General) Regulations to taxable supplies and thus an input tax credit may be claimed for this amount.

The CGST may, if he thinks fit, approve or direct the use of a method other than the above attribution formula (reg 30(1) of the GST (General) Regulations). For example, instead of using the value of turnover as the basis, the CGST may approve a method of attribution that relies on staff count, transaction count, cost centre accounting, floor area, etc.

The regulations also set out how much exempt input tax incurred can be claimed for non-reg 33 incidental exempt supplies.

(See IRAS e-Tax Guide "GST: Guide on Attribution of Input Tax", published on 30 May 2014, for details and useful examples.)

The IRAS e-Tax Guide "GST: Guide for Property Developer" (5th Ed), published on 11 January 2011, provides guidance on input tax claims relating to property development.

Input tax credit for GST paid on land purchased for residential development

From 1 January 2007, GST-registered developers who have incurred GST on the purchase of vacant land or land with buildings to be demolished for residential development (whether wholly or partially) can claim input tax credits for the GST incurred. The GST incurred will be regarded as attributable to the making of taxable supplies (reg 41 of the GST (General) Regulations).

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A developer who is not registered for GST purposes can apply for remission of GST incurred under certain circumstances.

For the conditions under which the IRAS may grant approval to a GST-registered developer for input tax claims and for the circumstances under which the IRAS may consider allowing the same relief to a non-GST registered developer, please see IRAS e-Tax Guide "GST Guide on Purchase of Land for Residential Development", published on 31 March 2014.

¶21-630 GST-inclusive price

The statutory scheme of the GST Act assumes that the supplier of goods and services will pass the burden of the output tax to the recipient of those goods and services.

Price displays

Where a taxable person publicly displays or advertises the price of any supply of goods or services he makes, or intends to make, it has to be the "GST-inclusive" price (reg 77(1) of the GST (General) Regulations). The intention is to require all suppliers of goods and services to sell the goods and services at their "GST-inclusive" price. Any taxable person wishing to display his prices "exclusive of GST" must seek the IRAS' approval (reg 78 of the GST (General) Regulations). Businesses in the hotel and F&B industries (ie hotels, restaurants and public houses) are allowed to display GST-exclusive prices for goods and services that are subject to service charges (see IRAS e-Tax Guide "GST: General Guide for Businesses", published on 8 October 2014).

Retailers have to state the GST-inclusive prices on their receipts and simplified tax invoices, printed with the words "Amount payable includes GST"; they are not required to show the amount of GST payable separately.

Person responsible for paying the output tax

However, the supplier and recipient may agree as to who should be responsible for paying the output tax. For example, an agreement between the parties might state that the supplier's output tax is to be borne by the supplier and not "passed on" to the customer.

As a general rule, an agreement that states that the consideration is "exclusive of GST" does not permit the supplier of the goods or services under that agreement to recover GST payable by the supplier in respect of the supply from the recipient (*Edwards & Edwards v Dittmer* (1989) 11 NZTC 6,063). However, a supplier may recover GST from a recipient if the consideration for the supply is stated as "plus GST (if any)" (*Rivett v Cooper* (1989) 11 NZTC 6,016).

In *Tropical Properties & Trading Pte Ltd v Suganung Tasani* (1996) MSTC 7,301; (1996) SGST ¶71-998, the vendor granted the purchaser an option to purchase a commercial property in Singapore. The option, exercised on 17 March 1994, did not provide for payment of GST as the GST Act only came into force on 1 April 1994. After the sale and purchase was completed on 9 June 1994, the vendor discovered that it had overlooked the GST payable and wrote to the purchaser to demand payment of the tax. The vendor contended that s 40 entitled the person making the supply to add the amount of GST payable onto the purchase price as of right, unless there was an agreement to the contrary.

The High Court held that the purchaser was not liable to pay GST. The sale of commercial property is a taxable supply and GST is due at the time of the supply, ie at the date of completion. GST is the liability of the "person making the supply", ie the vendor. However, s 40 does not automatically transfer the burden of GST to the person supplied. The words "the supplier may add to the agreed price in the contract the amount of that tax" in s 40 indicate that the supplier must decide whether GST is to be added to the price of the goods or services supplied. It could not have been the intention of Parliament that s 40 should allow the supplier an indefinite period of time to decide whether to add GST to the agreed price, or to request the purchaser to pay GST on a transaction after it had been completed. It is in the public interest that there ought to be finality and certainty in business and commercial affairs and an end party ought not to be open to future uncertain liabilities when performance of the contract has been completed and the purchase price discharged. As the vendor had failed to inform the purchaser before the transaction was concluded that it would be adding GST to the purchase price, it was not entitled to claim payment of GST from the purchaser.

In *ACS Computer Pte Ltd v Rubina Watch Company (Pte) & Anor* (1997) MSTC 7,307; (1997) SGST ¶71-999, the purchasers exercised an option to purchase commercial property. The sale was completed by an instrument of transfer. The options provided that GST was payable by the purchasers. However, there was no mention of the GST until sometime after the sale of the property, when the vendor's solicitors asked the purchasers for payment. One argument put forward by the purchasers was that the vendor was liable for GST under the GST Act. Although the options provided that they were liable for GST, the liability was inchoate until the vendors had paid the tax to the authorities. The purchasers argued that, since the vendors had not paid the GST at the date of the writ, there was no cause of action in debt.

The High Court held that the purchasers were liable to pay GST and that the time of payment was the date of completion of the sale. The purchasers could not resist payment on the ground that the vendor had not paid because, *vis-à-vis* the vendor, they had a present and immediate obligation to pay at the time of completion. That the vendor would not in the ordinary course have to pay the authorities immediately was entirely irrelevant.

ADMINISTRATIVE ISSUES

¶21-710 Accounting and filing obligations

Records

Every taxable person is required to keep the following records:

- business and accounting records
- copies of all tax invoices issued (including receipts) and received
- documentation relating to the taxable person's imports and exports
- all credit notes, debit notes or other documents which evidence changes in the consideration, and copies of all such documents issued, and
- such other records as may be prescribed (s 46).

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Business records including copies of hardcopy or electronic returns furnished to the IRAS must be preserved for a period of at least five years for accounting periods ending on or after 1 January 2007. For accounting periods ending before 1 January 2007, the records must be kept for at least seven years (s 46(2); reg 56 of the GST (General) Regulations).

Business records which are preserved in specified electronic formats do not require the CGST's approval if they satisfy the conditions in the IRAS e-Tax Guide "GST: Record Keeping Guide for GST-Registered Businesses" (3rd Ed), published on 31 December 2013, which has subsumed the following e-Tax Guides:

(i) "GST: Keeping Records of Business and Transactions in Microfilms", last revised on 1 July 2007

(ii) "GST: Keeping Machine-Sensible Records and Electronic Invoicing", last revised on 1 July 2007, and

(iii) "GST: Keeping of Records in Imaging Systems", last revised on 1 July 2007.

Tax invoice

A GST-registered person making a standard supply to a taxable person must provide a tax invoice within 30 days after the time of supply (reg 10(5) of the GST (General) Regulations). A tax invoice for goods or services which in total exceeds $1,000 is required to state the following particulars:

- the words "tax invoice" in a prominent place
- an identifying number
- the date of issue of the invoice
- the name, address and registration number of the supplier
- the name and address of the person to whom the goods or services are supplied
- a description sufficient to identify the goods or services supplied and the type of supply
- for each description, the quantity of the goods or the extent of the services and the amount payable, excluding tax
- any cash discount offered
- the total amount payable excluding tax, the rate of tax and the total tax chargeable, and
- the total amount payable including the total tax chargeable (reg 11 of the GST (General) Regulations).

Where tax invoice includes exempt, zero-rated or other supplies

If the tax invoice for payment on standard-rated supplies includes requests for payment on exempt, zero-rated or other supplies, the tax invoice must distinguish between these supplies and state separately the total amount payable for each supply.

Simplified tax invoice

A simplified tax invoice may be used if the amount payable, including tax, does not exceed $1,000. The following particulars must be stated on the simplified tax invoice (reg 13 of the GST (General) Regulations):

- the name, address and registration number of the supplier
- an identifying number

- the date of issue of the invoice
- a description sufficient to identify the goods or services supplied, and
- the total amount payable including the total tax chargeable.

Regulations 11 and 13 allow changes to the particulars of the tax invoice or simplified tax invoice so long as it is designated or approved by the CGST. For example, tax invoices issued under the Approved Marine Fuel Trader scheme have to include the annotation "Payment of GST is not required under the Approved MFT Scheme" (see IRAS e-Tax Guide "GST: Approved Marine Fuel Trader (AMFT) Scheme" (3rd Ed), published on 30 September 2013). The requirement to reflect the rate of tax in the tax invoice still remains.

Invoices issued in electronic form (e-invoices) do not require the CGST's approval if they comply with the conditions stated in the IRAS e-Tax Guide "GST: Record Keeping Guide for GST-Registered Businesses" (3rd Ed), published on 31 December 2013.

Invoicing for cash sales

The IRAS has clarified the following GST requirements with regard to cash sales (see IRAS e-Tax Guide "GST: General Guide for Businesses", published on 8 October 2014, which subsumed the previous e-Tax Guide "GST Requirements for Cash Transactions"):

- For a sale made to a GST-registered customer exceeding $1,000, a tax invoice must be issued with all relevant details including the full name and address of the customer.
- For a sale made to a GST-registered customer not exceeding $1,000, a simplified tax invoice can be issued with the relevant details.
- For a sale mainly made to non-GST registered customers, a serially numbered receipt can be issued instead of a tax invoice.

Only one original tax invoice or a simplified tax invoice can be issued for each cash transaction. Where a duplicate invoice is issued, it must be clearly marked as a "duplicate" or a "copy".

A fine of up to $5,000 may be imposed on a GST-registered trader for failure to comply with the above.

GST account and cash accounting

Businesses registered for GST are required to keep a GST account which gives a summary of the total of input tax and output tax for each accounting period. Where the total output tax is more than the total input tax for the period, the difference is the amount of GST payable to the IRAS.

Conversely, where the total output tax is less than the total input tax for the period, the difference is the amount of GST refundable by the IRAS.

A cash accounting scheme is available to certain taxable persons under the GST Act. This scheme basically permits the taxable person to compute his input and output tax on a cash payment and receipt basis respectively. It should be noted that the time of

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supply has not been changed — it is the liability to account for such tax that has been varied (reg 68 of the GST (General) Regulations). According to reg 68, "the operative dates" shall be:

- for output tax — date when payment is received or date of any cheque, if later, and
- for input tax — date when payment is made or date of any cheque, if later.

Before an application for cash accounting scheme is approved, the CGST has to be satisfied that the scheme is appropriate for the taxable person "due to the nature, volume and value of the taxable supplies" made by the taxable person and the nature of his accounting system. Regulation 69 of the GST (General) Regulations contains some conditions for eligibility.

Accounting software

The IRAS e-Tax Guide "Guide on Accounting Software for Software Developers" (4th Ed), published on 28 February 2014, provides a set of principles that the IRAS would like to have incorporated in the development of accounting software.

Filing obligations

A person who is registered or was or is required to be registered has to furnish a tax return (GST F5) to the CGST not later than one calendar month after the end of each three-month accounting period (s 41; reg 52 of the GST (General) Regulations). An application may be made to the CGST for a shorter accounting period of one month or a longer period of six months.

In each case, the tax return for the period must be furnished within one calendar month after the end of the period to which it relates.

All GST-registered persons have to file their returns electronically via the IRAS website at www.iras.gov.sg.

A taxable person who ceases to be registered for GST purposes is required to furnish a final return (GST F8) not later than one calendar month after ceasing to be registered.

Exchange rates for GST purposes

Unlike income tax rules, which allow tax and financial reporting in functional currencies other than the Singapore dollar, GST accounting and reporting is solely in Singapore currency equivalents. As transactions may occur in foreign currency, the exchange rate conversion process is an important aspect because it can affect the value of supply.

Example 7

An auditor is due to raise a tax invoice to a foreign client (branch office in Singapore) asking for a payment of US$10,000 for a local audit performed in Singapore. The time of supply will trigger at the time the invoice is issued.

Assume that US$1 = S$1.2 on 1 June 2015, US$1 = S$1.3 on 1 July 2015 and US$1 = S$1.25 on 1 August 2015.

If the auditor raises the invoice on 1 June 2015, the GST to be accounted to the IRAS

= 7% (GST rate) × 1.2 × US$10,000 = S$840.

If the auditor raises the invoice on 1 July 2015, the GST to be accounted
= 7% (GST rate) × 1.3 × US$10,000 = S$910.
If the auditor raises the invoice on 1 August 2015, the GST to be accounted
= 7% (GST rate) × 1.25 × US$10,000 = S$875.

By default, the selling rate of exchange prevailing in Singapore at the time of supply should be used for conversion (Third Schedule, para 11).

As an administrative concession, some other exchange rate may be used subject to the following conditions:

(a) It must be reflective of the Singapore money market at the relevant point in time.
These include rates published by local banks, local newspapers, reputable news agencies, foreign central banks and Singapore Customs.
(b) It must be the daily exchange rate corresponding to the time of supply. If not, it must be a good approximation of this rate.
(c) It must be updated at least once every three months.
(d) It must be used consistently for internal business reporting, accounting and GST purposes.
(e) It must be used consistently for at least one year from the end of the accounting period in which the method was first used.
(See IRAS e-Tax Guide "GST: Exchange Rates for GST Purposes", published on 30 September 2013.)

The IRAS' approval is required for the use of any other exchange rates.

¶21-720 Assessment, enforcement and collection/refund

Assessment

The CGST is authorised to assess GST due if:

(i) a taxable person has failed to either furnish a GST return or keep the necessary documents for verification of the return (s 45)
(ii) it appears to him that the return is incomplete/incorrect, or
(iii) an amount of GST has been repaid/refunded to a taxable person that ought not to have been repaid.

For accounting periods ending on or after 1 January 2007, the CGST has to make the assessment of tax within a period of five years after the end of the accounting period to which the assessment relates.

(For accounting periods ending before 1 January 2007, the assessment had to be raised within a period of seven years.)

If, however, in the CGST's opinion, fraud or wilful default has been committed by or on behalf of any person, the CGST may make an assessment at any time.

Anti-avoidance provision

Section 47 authorises the CGST to disregard or vary any "arrangement" which, directly or indirectly, has the purpose or effect of:

(a) altering the incidence or postponing the payment of tax

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(b) relieving any person from any tax liability or from making a return

(c) reducing or avoiding any liability imposed by the Act, or

(d) obtaining any credit or refund of input tax or any increase, which would not otherwise have been obtained.

The term "arrangement" is defined to mean any "agreement, contract, plan, understanding, scheme, trust, grant, covenant, disposition, transaction and includes all steps by which it is carried into effect".

Section 47 does not apply to any arrangement carried out for bona fide commercial reasons that does not have, as one of its main purposes, the avoidance or reduction of tax or the obtaining of any tax advantage.

Enforcement

The CGST has wide powers to obtain documents and information including:

(a) the power to take samples (s 83)

(b) the right to full and free access to buildings, places, documents, computers, computer programs, computer software and any information, code or technology for retransforming or unscrambling encrypted data (s 84(1)(a) and 84(1)(b))

(c) the right to have access to, inspect, copy or make extracts and check documents, computers and related equipment at any time (s 84(1)(c))

(d) the power to take possession of documents, computers, devices, apparatus, materials, computer programs or computer software where necessary (s 84(1)(d)), and

(e) the power to require any person to give information orally or in writing (s 84(3)).

Collection and refunds

A person furnishing his GST return must pay the CGST the GST due for the accounting period to which the return relates (ie the difference between the output tax and input tax for the period). The payment must be made no later than the last day on which the person is required to forward the GST return to the CGST (reg 59 of the GST (General) Regulations).

Unpaid tax and penalties are recoverable by the CGST as a debt due to the Government (s 78). The CGST may prevent a person who has failed to pay tax from leaving Singapore without first paying the tax or furnishing security to the CGST (s 82). Other recovery measures include recovery from moneys held by an agent and the power to seize and forfeit goods (s 79 and 83A–83D). Under s 83E (inserted by the GST (Amendment) Act 2013), the CGST or an authorised person has the power to seize goods and arrest a person without warrant in cases of suspected TRS fraud.

If input tax exceeds output tax, the CGST is required to refund the difference to the taxable person within one, three or six months equivalent to the prescribed accounting period of the taxable person (s 19(5); reg 63 of the GST (General) Regulations).

If the CGST fails to refund the tax on time, he is required to pay interest at the rate of 2.13% on the amount of payment outstanding calculated from the day after the refund payment should properly have been made. Where the amount of refund that is payable by the CGST is less than $10, no interest is payable (reg 64 and 65 of the GST (General) Regulations).

¶21-730 Objection and appeals

The GST appeal process is depicted below:

Comptroller

↓

GST Board of Review

↓

High Court

↓

Court of Appeal

A person may apply for the review and revision of any decision made by the CGST on the matters listed in s 49(1). They include matters relating to:

- GST registration/cancellation
- the tax chargeable on any supplies, and
- an assessment of penal tax.

The notice of objection must be in writing and made within 30 days of the date on which the person was notified of the decision to which he objects. The CGST may extend the period for lodging the notice (s 49(2)).

A person who disagrees with the CGST's decision on an application for review and revision may appeal to the GST Board of Review by lodging:

(a) a written notice of appeal with the Secretary of the GST Board of Review within 30 days from the date of the decision, and

(b) a petition of appeal (which sets out a statement of the grounds of appeal) with the Secretary within 30 days of the date on which the notice of appeal is lodged (s 51(1)).

The GST Board of Review will not hear a GST appeal unless the appellant has furnished to the IRAS all the returns that the appellant is required to make under the GST Act, paid the amounts shown in these returns as payable by him and paid the requisite filing fee (s 51(7), 51(8); reg 4 of the GST (Board of Review) Regulations). The form of the notice of appeal includes objections to any members of the Board. The form can be downloaded from the Ministry of Finance website at www.mof.gov.sg together with the notices of appeal for the other taxes. The address where the appeal can be lodged is generally reflected on the form or the accompanying instructions.

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An appeal to the High Court is permitted on the decision of the GST Board of Review upon any question of law or mixed question of law and fact. The only exception is a case where the GST Board of Review has determined that the tax payable or any amount due to the appellant is less than $500 (s 54).

Decisions by the High Court are open to appeal to the Court of Appeal (s 54(5)).

The GST Board of Review may state a case on a question of law for the opinion of the High Court (s 55).

¶21-740 Offences and penalties

Table 2 summarises the main GST offences and the prescribed penalties.

Table 2: Summary listing of offences and penalties

Offence	*Maximum penalty*
Failure to keep required records (s 46(6))	(On conviction) 1st offence: • Fine of up to $5,000, and/or • Imprisonment of up to 6 months 2nd or subsequent offence: • Fine of up to $10,000, and/or • Imprisonment of up to 3 years
An offence for which no penalty specifically provided (s 58)	(On conviction) • Fine of up to $5,000, and • If payment of fine is still not made, imprisonment of up to 6 months
Incorrect return (s 59(1))	(On conviction) • Amount of tax undercharged
Incorrect return without reasonable excuse or through negligence (s 59(2))	(On conviction) • Penalty of double the amount of tax undercharged, and • Fine of up to $5,000, and/or • Imprisonment of up to 3 years
Failure to pay tax/late payment (s 60(1))	• Penalty of 5% of the tax payable, and • If payment is still not made after 60 days, an additional penalty of 2% of the tax unpaid for each completed month, subject to a maximum of 50% of the unpaid tax
Failure to make returns/late lodgment of returns (s 60(2))	• $200 for each month of default up to a maximum of $10,000
Failure to register (s 61)	(On conviction) • Penalty of 10% of the tax due for each year (or part thereof) from the date when the offender should have registered, and • Fine of up to $10,000, and • For a continuing offender, a further penalty of up to $50 for every day the offence continues after conviction

Chapter 21

Offence	*Maximum penalty*
Wilful intent to evade tax by • omitting or understating output tax • overstating input tax • making any false statement • giving any false answer • preparing or maintaining any false books of account or records • using any fraud, art or contrivance (s 62(1))	(On conviction) • Penalty of 3 times the amount of tax undercharged, and • Fine of up to $10,000, and/or • Imprisonment of up to 7 years
Improperly obtaining refund (s 63)	(On conviction) • Penalty of 3 times the amount of excess refund, and • Fine of up to $10,000, and/or • Imprisonment of up to 3 years
Acquiring or dealing with goods and services knowing that tax has been or will be evaded (s 64(1))	(On conviction) • Fine of up to $5,000, and • Penalty of 3 times the amount of tax
Issue of tax invoice or receipt by unauthorised person (s 64(2))	(On conviction) • Fine of up to $10,000, and • Penalty of 3 times the amount of tax shown on the tax invoice or receipt
Collecting or attempting to collect tax where not authorised (s 65)	(On conviction) • Fine of up to $10,000, and/or • Imprisonment of up to 3 years
Obstructing the CGST in carrying out his duties (s 66)	(On conviction) • Fine of up to $5,000, and/or • Imprisonment of up to 6 months
Failure to furnish the requisite security (s 81)	(On conviction) • Fine of up to $5,000

The CGST may compound any GST offence for a sum not exceeding $5,000 (s 75). The offences covered under the GST (General) Regulations are generally prescribed in reg 108.

IRAS Voluntary Disclosure Programme (VDP)

At the outset, it should be noted that the IRAS VDP applies not only to GST, but also to income tax, withholding tax and stamp duty.

GST-registered traders are encouraged to voluntarily disclose any errors made in their GST returns due to ignorance or negligence. If voluntary disclosure is made within the one-year grace period of one year from the statutory filing date, the IRAS will waive the penalty due. If the voluntary disclosure is made after the grace period, the IRAS will reduce the penalty to a flat 5%. Regardless of the frequency of voluntary disclosures made by a taxpayer, all voluntary disclosures meeting the qualifying conditions will be accorded reduced penalties depending on whether the disclosure is made within or after the one-year grace period.

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To qualify for the reduced penalty, the voluntary disclosure must be timely, self-initiated, accurate and complete. The taxpayer must also cooperate fully with the IRAS to correct the errors made, and pay or arrange to pay additional taxes and penalties imposed (if any), and honour such arrangements until all payments are made.

The IRAS regards a taxpayer's voluntary disclosure as timely and self-initiated if it is made **before** the taxpayer receives:

(a) an IRAS query relating to its tax matters, or

(b) an IRAS notification of the commencement of an audit or investigation of its tax matters.

For a taxpayer that has already received an IRAS query or is under an IRAS audit or investigation, the disclosure will be treated as timely and self-initiated if it does not fall within the immediate scope of the query, audit or investigation.

(See IRAS e-Tax Guide "IRAS Voluntary Disclosure Programme" (5th Ed), published on 1 January 2013.)

Assisted Compliance Assurance Programme (ACAP)

The IRAS recently launched the Assisted Compliance Assurance Programme (ACAP) initiative. This replaced the GST Compliance Assurance Programme (CAP), which was launched in 2007 and which targeted large GST-registered companies with annual taxable supplies of at least $1b.

The ACAP is available to all GST-registered businesses regardless of their turnover. The ACAP encourages such businesses to better manage their GST risks and improve their GST compliance through a robust and effective internal control system.

The ACAP is suitable for businesses that have complex structures and business models, engage in voluminous transactions, place emphasis on tax risk management as part of their corporate governance, and/or rely on extensive in-built controls in their systems and processes to generate timely and accurate dates for financial and tax reporting.

A GST-registered business that has established GST Control Framework at three critical levels (entity level, transaction level and GST reporting level) can adopt ACAP voluntarily. It is required to notify the IRAS of its intention before undertaking an ACAP review. A business that meets all conditions for eligibility and is approved by the IRAS to take part in ACAP ("ACAP applicant") will not be selected for GST audit unless significant anomalies are noted from its return declarations or fraud is suspected.

The ACAP applicant may volunteer to have its GST control framework reviewed and verified by an independent party ("ACAP reviewer"), who may be a CPA firm, an independent in-house internal audit team, or a joint team from both of these. Businesses that demonstrate adequate and effective internal controls to prevent and detect GST errors will be awarded an ACAP status, ie "ACAP premium" for five years or "ACAP merit" for three years. Benefits of the ACAP status include:

- stepped-down GST audit activities
- faster GST refunds, and
- automatic renewal of GST schemes (eg Major Exporter Scheme), if applicable.

To encourage businesses to proactively adopt good tax risk management and establish a sustainable control framework in a holistic way, the IRAS is offering the following set of incentives for an initial period of five years, effective from 5 April 2011 to 4 April 2016:

(a) Co-funding 50% of the explicit fees incurred by businesses for the purpose of an ACAP review, subject to a cap of $50,000 per ACAP applicant.

(b) Granting an exceptional one-time waiver of penalties for past GST errors (regardless of the period to which the errors may relate) disclosed voluntarily in the course of the first ACAP undertaken by the business. This waiver applies only to past errors that occurred within the statutory time-bar period, and where fraudulent intent was absent.

The co-funding incentive will cease when the funding set aside by the IRAS is used up within the initial five-year period. However, the IRAS will extend the waiver of penalties for voluntary disclosures of non-fraudulent errors for another three years. Businesses that apply for ACAP participation from 5 April 2016 to 31 March 2019 will continue to enjoy the penalty waiver upon accord of the ACAP status.

The IRAS will waive penalties for genuine, non-wilful GST errors voluntarily disclosed either in the course of an ACAP review or, at the latest, in the submission of the ACAP report, if the business:

(a) notifies the IRAS by 31 March 2019 of its intention to embark on its first ACAP

(b) settles the additional taxes, and

(c) attains "ACAP Premium" or "ACAP Merit" status.

(See IRAS e-Tax Guide "GST: Assisted Compliance Assurance Programme (ACAP)" (6th Ed), published on 25 July 2014.)

GST Assisted Self-Help Kit (ASK)

ASK is a self-assessment package designed to help GST-registered businesses effectively manage their GST compliance. It focuses on three key aspects:

(i) put in place GST Practices comprising People, Record-keeping, Systems and Internal Controls to properly handle the GST reporting of transactions

(ii) assess through a Pre-Filing Checklist to ensure that GST returns are correct before submission, and

(iii) conduct Annual Review of past returns for early detection of errors.

A GST-registered business may adopt ASK voluntarily. ASK is compulsory however if the business is applying and/or renewing certain incentives such as the MES and IGDS.

For details, see IRAS website at www.iras.gov.sg.

¶21-750 Advance ruling system

Introduction

Section 90A on the advance ruling system, together with the Fifth Schedule, came into effect on 1 July 2007. The IRAS e-Tax Guide "GST: Advance Ruling System", published on 21 March 2014, explains the system and the application procedures.

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An advance ruling issued in accordance with s 90A is binding on the CGST and the applicant as follows:

- the CGST has to apply those statutory provisions in the manner set out in the ruling issued, and
- the advance ruling would apply to the specific arrangement that is the subject of the ruling request by the applicant and, where applicable, to the year(s) or period(s), and the provisions of the GST Act stated in the ruling. The applicant cannot rely on an advance ruling given for a different arrangement, even though the circumstances may be similar, or on an advance ruling given to another applicant for a similar transaction.

Where an advance ruling has been issued to a person who is registered under a GST group, that ruling would generally apply only to the person stated in the ruling. However, the ruling may also apply to the new member who has subsequently registered under the same GST group registration number and who has entered into the same arrangement as stated in the ruling. The new member has to seek prior approval from the CGST before the ruling can apply to him. The new member is not required to pay additional fees for the ruling to apply to him.

Once an advance ruling is issued, it is final whether or not the ruling is favourable to the taxpayer. Where the taxpayer decides not to comply with the ruling, the taxpayer has to declare in writing that the ruling obtained has not been complied with when it submits a GST return that includes the transaction that has been the subject of that ruling. The taxpayer has to provide the following information:

- date and reference number of the advance ruling obtained
- period covered by the GST return(s) affected by the ruling
- reasons for not complying with the ruling, and
- explanation for the difference(s) in the amount(s) reported in the GST return(s) mentioned in (b).

The CGST may revise the GST assessment accordingly where the taxpayer has not complied with the ruling in completing the return and there is no material change in the facts and circumstances of the arrangement. The taxpayer may appeal against the assessment (s 51).

Validity period of GST rulings

An advance ruling is valid for three years from the date of issue of the ruling, unless the CGST decides otherwise. An advance ruling may be issued with the condition that the arrangement stipulated in the ruling has to be carried out by the end of the period stated in the ruling. Otherwise, the ruling will lapse automatically.

Invalid rulings

An advance ruling will cease to apply from the date a provision of the GST Act is repealed or amended to the extent that the repeal or amendment changes the way the provision applies in the ruling. The CGST will inform the taxpayer in writing of the cessation of the advance ruling.

An advance ruling may also cease to apply before the expiry of its validity period under the following circumstances:

- the arrangement that takes place is materially different from the arrangement identified in the ruling
- there is material omission or misrepresentation in, or in connection with, the application for the ruling
- the CGST makes an assumption about a future event or another matter that is material to the ruling, and the assumption subsequently proves to be incorrect, or
- the CGST stipulates a condition that is not satisfied.

An advance ruling may also be withdrawn by the CGST. The taxpayer will be informed of the reasons for, and the effective date of, the withdrawal. However, the ruling continues to apply to any arrangement entered into before the date of withdrawal.

Fee structure for rulings

The fees for the provision of an advance ruling are based on cost recovery and their structure is as follows:

- an application fee of $535 (inclusive of GST) is payable upon application and is non-refundable, even if the ruling request is rejected by the CGST (eg where the arrangement is hypothetical) or subsequently withdrawn by the applicant (for whatever reasons)
- a further time-based fee of $133.75 (inclusive of GST) per hour for each or part hour after the first four hours taken to provide the ruling, and
- a reimbursement fee for any costs and reasonable disbursements the CGST incurred for the advance ruling and any fees paid by the CGST for external professional advice with the taxpayer's agreement.

The fees for an express ruling are:

- three times the original fees (where the CGST receives the application 10 to 14 working days before the filing deadline), and
- twice the original fees (where the CGST receives the application 15 working days to less than one month before the filing deadline).

Once the CGST accepts an application for an advance ruling, the applicant will be informed of the estimated completion time and estimated fees payable. The applicant has to confirm in writing his acceptance of the terms. Otherwise, the application will be treated as withdrawn.

If the applicant subsequently withdraws his request, he still has to pay the fees chargeable up to the time the CGST receives the letter of withdrawal.

There are no additional fees to be imposed should the applicant seek further clarification on the contents of the ruling after the issue of the ruling.

Ruling processing time

An advance ruling will be issued within one month from the date of receipt of complete information. For a complex GST issue, the applicant will be informed of the time required for the ruling to be issued at the time the application is accepted.

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An express advance ruling will be issued within:

- 10 working days from the date of receipt of complete information (for three times the original fees), or
- 15 working days from the date of receipt of complete information (for twice the original fees).

¶21-760 GST Voucher Fund

The Government established a GST Voucher Fund ("Fund") which is to be held, managed and administered as a Government Fund. The Fund came into operation on 1 February 2013 (*GST Voucher Fund Act 2012 (Commencement) Notification 2013*).

There is to be paid into the Fund:

(a) all money from time to time appropriated from the Consolidated Fund and authorised to be paid into the Fund by any written law

(b) all other revenues of Singapore allocated by any written law to the Fund

(c) all gifts and donations given or made by any person or organisation to the Government for the purposes of the Fund, and

(d) all investments out of moneys in the Fund authorised to be made by any written law and the proceeds of any such investment, including the net income from such investments.

The money in the Fund may be withdrawn and applied to provide financial assistance (including cash grants, rebates, reliefs, subsidies and credits) under a public scheme to natural persons who are in need of relief from GST as may be prescribed. It can also be used to pay certain other expenses and for certain other authorised purposes.

An extra GST voucher was issued in 2013 to help households cope with the rising costs of living.

2014 Budget announcement

Following the 2014 Budget announcement, the following payments were made:

(1) The GST Voucher – U-Save Special Payment was paid out on top of the regular GST Voucher – U-Save Payment.

(2) The GST Voucher – Cash: Seniors' Bonus, a one-off payment, was paid to eligible Singaporeans aged 55 and above in 2014. This was on top of their regular GST Voucher – Cash. Only those whose assessable income for YA 2013 was $26,000 or less and whose home had an annual value (AV) of $21,000 or less as at 31 December 2013 were eligible.

2015 Budget announcement

The following GST Vouchers (GSTV) will be given out:

(1) GSTV – Cash

To help lower-income households cope with the costs of living, the GSTV – Cash payouts will be permanently increased by $50 from 2015 onwards. Eligible Singaporeans aged 21 years and above will receive $150 or $300; the amount depends on whether the AV of their home as at 31 December 2014 is up to $13,000, or is between $13,001 and $21,000. Only those whose assessable income for YA 2014 is $26,000 or less are eligible.

(2) One-off GSTV – Seniors' Bonus

Eligible older Singaporeans aged 55 years and above will receive an extra GSTV, the GSTV – Seniors' Bonus in 2015. Only individuals whose assessable income for YA 2014 is $26,000 or less and who do not own more than one property will qualify. The amount will be $150 if the AV of their home as at 31 December 2014 is between $13,001 and $21,000. If the AV of the home as at 31 December 2014 is up to $13,000, the amount will be $300 (for individuals aged 55 to 64 years) or $600 (for those aged 65 years and above).

¶21-780 GST treatment of virtual currencies

The IRAS' position below concerning the GST treatment of virtual currencies is taken from the IRAS website (www.iras.gov.sg), last updated on 23 January 2014.

Virtual currencies (eg Bitcoins) are not considered as "money", "currency" or "goods" for GST purposes. Instead, the supply of virtual currency is treated as a **supply of services**, which does not qualify for GST exemption.

Businesses that buy goods or services using virtual currencies

If a trader uses virtual currencies to pay for goods or services, the transaction will be considered as a **barter trade**. There are two supplies made — one by the supplier who supplies the goods and services, and another by the trader who uses virtual currencies to pay the supplier. GST is chargeable on each supply if the respective supplier is GST-registered. However, if a trader uses virtual currencies to pay a supplier belonging outside Singapore, the supply made by the trader will be zero-rated.

As an IRAS concession, if a GST-registered trader uses virtual currencies to buy virtual goods or services within the gaming world, he need not charge GST until they are exchanged for real monies, goods and services.

Businesses that sell virtual currencies

If a GST-registered trader sells virtual currencies as a principal, he is required to charge 7% GST on the sale of the virtual currencies, unless the sale is made to a person belonging outside Singapore (in which case the sale is zero-rated).

However, if the trader acts as an agent for another party when selling the virtual currencies, the trader is required to charge GST on the commission fees he receives, unless the service is supplied to a person belonging outside Singapore (in which case the supply is zero-rated).

Trading fees charged by a GST-registered virtual currency exchange located in Singapore are subject to GST.

Businesses that import goods paid for using virtual currencies

Goods imported and paid for using virtual currencies are subject to the same import GST rules and reliefs as those paid for using real currencies (see ¶21-540).

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CHAPTER 22

APPENDIX

¶22-000 Appendix — Summary of Singapore's tax treaties

A summary of the tax treaties signed by Singapore can be found in the following table.

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Albania	1.1.2012	Income tax	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross dividends	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross interest Exempt from source country tax if paid to the Government of the other Contracting State or any other government institution thereof as may be agreed between the authorities of the two States	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where: (i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, or if his/her presence in the other Contracting State exceeds 183 days in any 12-month period, only income that is attributable to that fixed base or activities in the other Contracting State may be taxed in that other Contracting State	Available for Albania tax forgone on income exempted from tax in Albania

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in the calendar year where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	27	2	8	10	11	12	14–15	22

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Australia	1.1.70	Income tax and petroleum resource rent tax in respect of offshore projects	Exempt from tax in one Contracting State for air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	Australian tax on dividends derived by Singapore resident limited to 15% of gross dividends; Singapore tax exemption for dividends derived by Australian resident	Source country tax on interest derived in one Contracting State by beneficial owner who is resident in another Contracting State limited to 10% of gross interest	Source country tax on royalties derived from one Contracting State by resident in the other Contracting State who is beneficially entitled to the royalties limited to 10% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Available for Singapore tax forgone under the *Economic Expansion Incentives (Relief from Income Tax) Act* and s 13(4), *Income Tax Act* until the year of income that commenced on 1 July 1997
Article	21	1	7	8	9	10	11–12	18
Austria	1.1.2003	Income tax and corporation tax	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	Source country tax limited to 10% of gross dividends if resident of the other Contracting State is beneficial owner of the dividends	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in another Contracting State limited to 5% of gross interest; Exemption of source country tax for:	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where:	Not available

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				Only taxed in the Contracting State of the beneficial owner of the dividends if recipient is a company which holds directly at least 10% of the capital of the company paying the dividends	(i) interest paid to Government of the other Contracting State		(i) in the case of independent personal services, the individual is present in the other Contracting State for 183 days or less, or has no fixed base of operation in the other Contracting State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				Exempted from source country tax if dividends paid by company resident in one Contracting State to Government of the other Contracting State	(ii) interest paid in respect of a loan or credit made, guaranteed or insured by the Oesterreichische Kontrollbank AG or similar Singapore public entity which promote export Exemption of interest derived and beneficially owned by bank of one Contracting State in the other Contracting State if payer is a bank in the latter		(ii) in the case of dependent services, assignments lasting 183 days or less in any 12-month period in the calendar year where remuneration is paid by an employer who is not a resident in the other Contracting State and where the remuneration is not borne by a PE or fixed base of the employer in the other Contracting State	
Article	27	1	8	10	11	12	14–15	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Bahrain	1.1.2005	Income tax	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Exempt from source country tax if paid by a company resident in one Contracting State to a resident of the other Contracting State who is the beneficial owner of the dividends	Source country tax on income from debt-claims arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross interest Exempt from source country tax if income from debt-claims arising in one Contracting State is paid to the Government of the other Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where: (i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, only income that is attributable to that fixed base may be taxed in that other Contracting State, or	Not available

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of independent services, if the individual's stay in the other Contracting State exceeds 183 days in any calendar year, only income that is derived from his/her activities performed in that other Contracting State may be taxed in that other Contracting State, and	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(iii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any calendar year where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	27	2	8	10	11	12	14–15	
Bahrain (Air transport treaty)	1.1.71	Tax on income and profits	Exempt from tax in one Contracting State for international air transport operations of enterprise carried on by a resident of the other Contracting State	No specific provision	Exempt from tax in one Contracting State for interest derived from bank deposits connected with international air transport operations carried on by a resident of the other Contracting State	No specific provision	Income derived in respect of employment exercised aboard an aircraft operated in international traffic shall be taxable only in state of residence of enterprise	No specific provision
Article	6	1	3		3		3	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Bangladesh	1.1.80	Income tax and super tax	Exempt from tax in one Contracting State for air transport operations and tax reduction of 50% for international shipping operations of enterprise carried on by a resident of the other Contracting State	Source country tax limited to 15% of gross dividends if resident of the other Contracting State is beneficial owner of the dividends	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in another Contracting State limited to 10% of gross interest	Source country tax on royalties derived from one Contracting State by beneficial owner who is resident in the other Contracting State limited to 10% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Available for Singapore and Bangladesh tax forgone on dividends, interest and royalties under laws designed to promote economic development in Singapore and Bangladesh respectively
Article	29	2	8–9	11	12	13	15	24
Barbados	1.1.15	Income tax in Singapore; income tax, corporation tax and petroleum winning operations tax in Barbados	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Exempt from source country tax if paid by a company resident in one Contracting State to a resident of the other Contracting State	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to 12% of gross interest Exempt from source country tax if paid to the Government of the other Contracting State	Source country tax on royalties derived from one Contracting State by beneficial owner who is resident in the other Contracting State limited to 8% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former, except:	No specific provision

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities; only income that is attributable to that fixed base may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of independent services, if the individual is present in the other Contracting State for a period or periods exceeding in the aggregate 365 days in any 15-month period; only so much of the income as is derived from the activities performed by that individual in that other Contracting State may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(iii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in the calendar year where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	27	2	8	10	11	12	14–15	22
Belarus	1.1.2014	Income tax in Singapore; income and profits tax in Belarus	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to 5% of gross dividends if the beneficial owner is a resident of the other Contracting State	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to 5% of gross interest	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to 5% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former, except:	No specific provision

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				Exempt from source country tax if paid to the Government of the other Contracting State or any other government institution thereof	Exempt from source country tax if paid to the Government of the other Contracting State or any other government institution thereof		(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities; only income that is attributable to that fixed base may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of independent services, if the individual is present in the other Contracting State for a period or periods exceeding in the aggregate 270 days in any 12-month period; only so much of the income as is derived from the activities performed by that individual in that other Contracting State may be taxed in that other Contracting State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(iii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	27	2	8	10	11	12	14–15	22
Belgium	1.1.2009	Income tax in Singapore; individual income tax, corporate income tax, income tax on legal entities and non-residents, prepayments and surcharges on any of the above taxes in Belgium	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to:	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross interest	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to:	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	Not available

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 5% of gross dividends if the beneficial owner is a company that holds directly at least 10% of the capital of the company paying the dividends	Exempt from source country tax if paid by a banking enterprise of the other Contracting State	(i) 5% of gross royalties paid for the use of, or the right to use, any copyright of literary, artistic or scientific work including computer software, cinematograph films, and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, and	(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, only income that is attributable to that fixed base may be taxed in that other Contracting State, or	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 15% of gross dividends in all other cases	Exempt from source country tax if paid to the Government of the other Contracting State	(ii) 5% of the adjusted royalties (adjusted royalties being 60% of gross royalties) paid for the use of, or the right to use, any industrial, commercial or scientific equipment	(ii) in the case of independent services, if the individual's stay in the other Contracting State exceeds 183 days in any 12-month period, only income that is derived from his/her activities performed in that other Contracting State may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				Exempt from source country tax if the beneficial owner is a company that is a resident of that other Contracting State and holds directly at least 25% of the capital of the company paying the dividends for a continuous 12-month period			(iii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
				Exempt from Belgian tax if paid by a company that is resident in Belgium to the Government of Singapore				
Article	28	2	8	10	11	12	14–15	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Brazil (shipping and aircraft operations treaty)	1.1.2014	Income tax in Singapore; corporate income tax in Brazil	Exempt from tax in one Contracting State for international air or shipping transport operations by an enterprise in the other Contracting State	No specific provisions on these matters as this treaty is restricted to mutual tax exemption of income from international shipping and aircraft operations				
Article	6	1	3					
Brunei	1.1.2007	Income tax and petroleum profits tax	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	Source country tax limited to 10% of gross dividends if resident of the other Contracting State is the beneficial owner of the dividends	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in another Contracting State limited to: (i) 5% of gross interest if received by bank or financial institution, and (ii) 10% in all other cases	Source country tax on royalties derived from one Contracting State by beneficial owner who is resident in the other Contracting State limited to 10% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for:	Available for Singapore and Brunei tax forgone under laws designed to promote economic development in Singapore and Brunei respectively

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(i) in the case of independent services, persons without a fixed base of operation or stays for a period or periods less than 183 days in any 12-month period (ii) in the case of dependent services, assignments lasting 183 days or less in any 12-month period and where the remuneration is not borne by a resident of the other Contracting State or a permanent establishment/ fixed base of the employer in the other Contracting State	
Article	28	2	8	10	11	12	14	23

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Bulgaria	1.1.99	Tax on total income and tax on profit	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	Source country tax limited to 5% of gross dividends if resident of the other Contracting State is beneficial owner of the dividends; Exempted from source country tax if dividends paid by company resident in one Contracting State to Government of the other Contracting State	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in another Contracting State limited to 5% of gross interest Exemption of source country tax for interest paid to Government of either Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of independent services, persons without fixed base of operation (ii) in the case of dependent services, assignments lasting 183 days or less	Not available
Article	29	2	8	10	11	12	14–15	
Canada	1.1.77	Income taxes	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	Source country tax limited to 15% of gross dividends if resident of the other Contracting State is beneficial owner of the dividends	Source country tax on interest arising in one Contracting State and paid to resident of another Contracting State limited to 15% of gross interest	Source country tax on royalties arising in one Contracting State and paid to resident in the other Contracting State, provided that royalties are taxed in that other State, is limited to 15% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Available for Singapore tax forgone under Pt VI of the *Economic Expansion Incentives (Relief from Income Tax) Act*
Article	27	2	8	10	11	12	14	22

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Chile (Shipping operations treaty) No specific article	1.1.92	Income taxes	Exempt from tax in one Contracting State for international shipping operations of enterprise carried on by a resident of the other Contracting State	No specific provisions on these matters as this treaty is restricted to mutual tax exemption of income from international shipping operations				
China (People's Republic) (2007, amended by 2009 Protocol)	1.1.2009	Individual income tax, enterprise income tax, and income tax	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	China tax limited to: (i) 5% of gross dividends if the beneficial owner is a company (other than a partnership) that holds directly at least 25% of the capital of the company paying the dividends	Source country tax on interest arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to:	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 10% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of independent services, he/she has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State, or	Available only for Chinese tax forgone under specific China tax laws

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 10% of the gross amount of the dividends in all other cases	(i) 7% of gross interest if received by a bank or financial institution, or (ii) 10% of gross interest in all other cases, except for exemption for interest paid to the Government of either Contracting State and certain banks		(ii) in the case of dependent personal services, the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any 12-month period	
Article	28	2	8	10	11	12	14–15	22
Cyprus	1.1.2003	Income tax, corporate income tax, capital gains tax and special contribution for the defence of Cyprus	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	Dividends exempt from source country tax if paid by company resident in one Contracting State to a resident of the other Contracting State who is the beneficial owner of the dividends	Source country tax on interest arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to:	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 10% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for:	Not available

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					(i) 7% of gross interest if received by a bank or financial institution, or (ii) 10% of gross interest in all other cases,		(i) in the case of independent services, persons without fixed base of operation and stay for periods (in aggregate) for less than 90 days within a 12-month period (ii) in the case of dependent services, assignments lasting 183 days or less where remuneration is not paid by an employer which is a resident in the latter Contracting State and when the remuneration is not borne by a PE or fixed base in the latter Contracting State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					except for exemption for interest paid to Government of either Contracting State			
Article	27	2	8	10	11	12	14–15	
Czech Republic (amended by 2014 Protocol)	1.1.2000 (1.1.2015 for 2014 Protocol)	Tax on income of individuals and legal persons	Exempt from tax in one Contracting State for international air transport operations and tax reduction of 50% for international shipping operations of enterprise carried on by a resident of the other Contracting State From 1 January 2015: taxable only in the Contracting State in which the effective place of management of the enterprise is situated	Source country tax limited to 5% of gross dividends if resident of the other Contracting State is beneficial owner of the dividends	Exempt from source country tax if interest arises in one Contracting State and is paid to beneficial owner who is resident in the other Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 10% of gross royalties From 1 January 2015, source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to:	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of independent services persons without fixed base of operation or assignments lasting 183 days or less	Not available

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
						i) 5% of gross royalties paid as consideration for the use of, or the right to use industrial, commercial or scientific equipment	(ii) in the case of dependent services, if all the following conditions are fulfilled: assignments last 183 days or less; remuneration is paid by, or on behalf of, an employer who is not resident in the other State; and remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
						(ii) 10% of gross royalties paid as consideration for the use of, or the right to use any patent, trade mark, design or model, plan, secret formula or process and computer software, or for information concerning industrial, commercial or scientific experience		
Article	27	2	8	10	11	12	14–15	
Denmark (2000)	1.1.2002	State income tax, municipal income tax, income tax to county municipalities and hydrocarbon taxes	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to beneficial owner who is a resident in the other Contracting State, source country tax limited to:	Source country tax on interest arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to 10% of gross interest except for exemption for interest paid to Government of either Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 10% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for:	Not available

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 0% of gross dividends if the beneficial owner holds directly at least 25% of the capital of the company (ii) 5% of gross dividends if the beneficial owner is a pension fund or other similar institution providing pension schemes where individuals may participate in order to secure retirement benefits, and (iii) 10% of gross dividends in all other cases			(i) in the case of independent services, persons without fixed base of operation or stays for less than 90 days in any 12-month period in the calendar year (ii) in the case of dependent services, assignments lasting 183 days or less in any 12-month period in the calendar year and the remuneration is not borne by a permanent establishment of the employer in the other Contracting State	
Article	28	2	8	10	11	12	14–15	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Egypt	1.1.2006	Tax on income derived from immovable property (including the land tax and building tax), the unified tax on income of individuals levied by the law No 157 for the year 1981 and amended by the law No 187 for the year 1993, corporation profits tax, development duty imposed by the law No 147 for the year 1984 and its amendments, supplementary taxes imposed as percentage of taxes mentioned above	Income from international air transport and shipping operations subject to tax in the Contracting State in which the place of effective management of the enterprise is situated	Source country tax limited to 15% of gross dividends if resident of the other Contracting State is beneficial owner of the dividends	Source country tax on interest arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to 15% of the gross amount of the interest except for exemption for interest paid to Government of either Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 15% of the gross amount of royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of independent services, persons without a fixed base of operation or stays for a period or periods less than 183 days in the calendar year concerned	Singapore grants tax sparing credit for Egyptian tax exempted or reduced in accordance with Egyptian tax laws relating to incentives for the promotion of economic development in Egypt. This will apply for the first 10 years for which the Agreement is in effect.

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of dependant services, assignments lasting 183 days or less in any 12-month period in the calendar year and the remuneration is not borne by a permanent establishment of the employer in the other Contracting State	
Article	29	2	8	10	11	12	14–15	23
Estonia	1.1.2008	Income tax	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to:	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 10% of gross interest	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 7.5% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	Not available

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 5% of gross dividends if the beneficial owner is a company that holds directly at least 25% of the capital of the company paying the dividends	Exempt from source country tax if paid to the Government of the other Contracting State		(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, only income that is attributable to that fixed base may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 10% of gross dividends in all other cases			(ii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
				Exempt from source country tax if paid to the Government of the other Contracting State in respect of shares in joint stock companies				
Article	28	2	8	10	11	12	14–15	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Fiji	1.1.2007	Income tax and land sales tax	Exempt from tax in one Contracting State for international air transport and shipping operations of an enterprise carried on by a resident of the other Contracting State	Source country tax limited to 5% of gross dividends if the beneficial owner directly controls at least 10% of the voting power of the company; 15% in all other cases	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in another Contracting State limited to 10% of gross interest, except for exemption for interest paid to the Government of either Contracting State	Source country tax on royalties derived from one Contracting State by a beneficial owner who is resident in the other Contracting State limited to 10% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of independent services, persons without a fixed base of operation or staying for a period or periods less than 120 days in any 12-month period	Available for Singapore and Fiji tax forgone under laws designed to promote economic development in Singapore and Fiji respectively

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of dependent services, assignments lasting 183 days or less in any 12-month period and the remuneration is not borne by a resident of the other Contracting State or a permanent establishment/fixed base of the employer in the other Contracting State	
Article	28	2	8	10	11	12	14–15	23
Finland (2002)	1.1.2004	State income taxes, corporate income tax, communal tax, church tax, tax withheld at source from interest and tax withheld at source from non-resident's income	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to beneficial owner who is a resident in the other Contracting State, source country tax limited to:	Source country tax on interest arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to 5% of gross interest except for exemption for interest paid to Government of either Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to 5% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for:	Not available

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 5% of gross dividends if the beneficial owner controls directly at least 10% of the voting power of the company (other than a partnership), and (ii) 10% of gross dividends in all other cases			(i) in the case of independent services, persons without fixed base of operation or stays for less than 183 days in any 12-month period in the calendar year, and (ii) in the case of dependent services, assignments lasting 183 days or less in any 12-month period in the calendar year and the remuneration is not borne by a resident of the other Contracting State or a permanent establishment/ fixed base of the employer in the other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				Notwithstanding the above, if an individual resident in Finland is under Finnish tax law entitled to a tax credit in respect of dividends paid by a company resident in Finland, dividends paid by a company resident in Finland to a resident of Singapore is taxable only in Singapore if the beneficial owner of the dividends is a resident in Singapore Exemption in one Contracting State for dividends paid by company resident in that Contracting State to the Government of the other Contracting State				
Article	28	2	8	10	11	12	14–15	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
France	1.1.72	Income tax and corporation tax, including any withholding tax, prepayment or advance payment in respect of the above taxes	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in France to a resident of Singapore, French tax limited to 15% of gross dividends if recipient is the beneficial owner of the dividends, but limited to 10% of gross dividends if recipient is a beneficial owner which is a company holding at least 10% of French company's capital	Source country tax on interest arising in one Contracting State and paid to a resident in the other Contracting State limited to 10% of gross interest except for exemption in respect of interest arising in one Contracting State and: (i) paid to Government of the other Contracting State, or (ii) paid on debentures issued by, or on loans made to, an enterprise resident in the other Contracting State which is engaged in an industrial undertaking	Royalties arising in one Contracting State and paid to resident of the other Contracting State, except for royalties received for the use of, or the right to use, any copyright of literary or artistic work, including cinematographic films and tapes for television or broadcasting or for information concerning commercial experience, are exempt from source country tax	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Available for dividends paid out of income exempted from Singapore tax under the *Economic Expansion Incentives (Relief from Income Tax) Act* or tax forgone on interest and royalties under the tax treaty
Article	30	2	8	10	12	13	15	24

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Georgia	1.1.2011	Income tax in Singapore; profit tax and income tax in Georgia	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Exempt from source country tax	Exempt from source country tax	Exempt from source country tax	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where: (i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, only income that is attributable to that fixed base may be taxed in that other Contracting State	Not available

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in the calendar year where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	28	2	8	10	11	12	14–15	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Germany (2006)	1.1.2007	Income tax in Singapore; income tax, corporation tax, capital tax and trade tax in Germany	Profits from international air transport and shipping operations subject to tax only in the Contracting State in which the place of effective management of the enterprise is situated	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to:	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 8% of gross interest	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 8% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	Available for Singapore tax on interest and royalties forgone under special incentive measures designed to promote economic development in Singapore

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 5% of gross dividends if the beneficial owner is a company that holds directly at least 10% of the capital of the company paying the dividends	Exempt from source country tax if paid to the Government of the other Contracting State or any other government institution thereof as may be agreed between the authorities of the two States		(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, or if his/her presence in the other Contracting State exceeds 183 days in the calendar year, only income that is attributable to that fixed base or activities in the other Contracting State may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 15% of gross dividends in all other cases			(ii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State and where the remuneration is not subject to tax in the first Contracting State	
Article	31	2	8	10	11	12	14–15	24

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Germany (1972)	1.1.69	Income tax, corporation tax and surcharge thereon, capital tax and trade tax	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to resident of the other Contracting State, source country tax limited to: (i) 10% of gross dividends if recipient is company holding at least 25% of dividend-paying company's capital, or (ii) 15% of gross dividends in all other cases	Source country tax on interest arising in one Contracting State and paid to a resident in the other Contracting State limited to 10% of gross interest. Exempt for interest paid to governmental institutions of the other Contracting State that are determined by mutual agreement	Royalties arising in one Contracting State and paid to resident of the other Contracting State, except for royalties received for the use of, or the right to use, any copyright of literary or artistic work, including cinematographic films or tapes for television or broadcasting, are exempt from source country tax	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Available for Singapore tax on interest and royalties forgone under special incentive measures designed to promote economic development in Singapore
Article	29	2	8	10	11	12	14	23
Guernsey	1.1.2014	Income tax	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Exempt from source country tax if the beneficial owner is a company that is a resident of that other Contracting State	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to 12% of gross interest	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to 8% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former, except:	No specific provision

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					Exempt from source country tax if paid to the Government of the other Contracting State		(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities; only income that is attributable to that fixed base may be taxed in that other Contracting State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of independent services, if the individual is present in the other Contracting State for a period or periods exceeding in the aggregate 365 days in any 15-month period; only so much of the income as is derived from the activities performed by that individual in that other Contracting State may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(iii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	27	2	8	10	11	12	14–15	22
Hong Kong (Shipping and aircraft operations treaty)	1.1.2005	Income tax, salaries tax and profit tax	Exempt from tax in one Contracting State for international air transport operations by an enterprise managed and controlled in the other Contracting State	No specific provision	No specific provision	No specific provision	Income derived from employment exercised aboard an aircraft operated in international traffic shall be taxable only in the State where the air transport enterprise is managed and controlled	No specific provision
Article			3				3	

Chapter 22

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Hungary	1.1.2000	Income tax on individuals and corporation tax	Exempt from tax in one Contracting State for international air transport operations and tax reduction of 50% for international shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to resident of the other Contracting State who is beneficial owner of the dividends, source country tax limited to: (i) 5% of gross dividends if recipient is company holding at least 25% of dividend-paying company's capital, or	Source country tax on interest arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to 5% of gross interest. Exempt for interest paid to: (i) Government of either Contracting State, or	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of independent services, persons without fixed base of operation or stays for less than 183 days within a 12-month period	Available for Singapore tax reduced or exempted under tax incentives for the promotion of economic development in Singapore

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 10% of gross dividends in all other cases	(ii) bank by a bank of the other Contracting State		(ii) in the case of dependent services, assignments lasting 183 days or less over a 12-month period and the remuneration is not borne by a permanent establishment of the employer in the other Contracting State	
Article	29	2	8	10	11	12	14–15	24
India (1994)	1.1.95	Income tax and surcharge thereon	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to resident of the other Contracting State who is beneficial owner of the dividends, source country tax limited to:	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is a resident in the other Contracting State limited to:	Source country tax on royalties and technical fees arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to 10% of gross amount of royalties and technical fees (Protocol signed on 29 June 2005)	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for:	Available for Singapore tax and Indian tax forgone under the *Economic Expansion Incentives (Relief from Income Tax) Act* and certain provisions of the *Income Tax Act* and India's laws respectively

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 10% of gross dividends if recipient is company holding at least 25% of dividend-paying company's capital, or (ii) 15% of gross dividends in all other cases	(i) 10% of gross interest if interest paid on loan granted by bank carrying on bona fide banking business or by a similar financial institution (including insurance company) (ii) 15% in all other cases	(i)	(i) in the case of independent services, persons without fixed base of operation or assignments lasting 90 days or less (ii) in the case of dependent services, assignments lasting 183 days or less	
Article	30	2	8	10	11	12	14–15	25
Indonesia	1.1.93	Income tax, company tax, tax on interest, dividends and royalties	Exempt from tax in one Contracting State for international air transport operations and tax reduction of 50% for international shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to resident of the other Contracting State who is beneficial owner of the dividends, source country tax limited to: (i) 10% of gross dividends if recipient is company holding at least 25% of dividend-paying company's capital, or	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 10% of gross interest except for exemption in respect of interest paid to Government of either Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 15% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where: (i) in the case of independent services, assignments last 90 days or less	Not available

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 15% of gross dividends in all other cases			(ii) in the case of dependent services, assignments last 183 days or less	
Article	28	2	8	10	11	12	13–14	
Ireland	1.1.2011	Income tax in Singapore; income tax, income levy, corporation tax and capital gains tax in Ireland	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Exempt from source country tax	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross interest	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	Available for tax forgone on exempted income derived by residents of both Contracting States

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					Exempt from source country tax if paid to the Government of the other Contracting State or any other government institution thereof as may be agreed between the authorities of the two States		(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, or if his/her presence in the other Contracting State exceeds 183 days in any 12-month period, only income that is attributable to that fixed base or activities in the other Contracting State may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in the calendar year where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	28	2	8	10	11	12	14–15	23
Isle of Man	1.1.2014	Income tax in Singapore; taxes on income or profit in the Isle of Man	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Exempt from source country tax	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to 12% of gross interest	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to 8% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former, except:	Available for tax forgone on exempted income derived by residents of the Isle of Man

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					Exempt from source country tax if paid to the Government of the other Contracting State		(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, or if his/her presence in the other Contracting State exceeds 365 days in any 15-month period; only income that is attributable to that fixed base or activities in the other Contracting State may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	27	2	8	10	11	12	14, 15	22

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Israel	1.1.72	Income tax and security levy	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to resident of the other Contracting State who is subject to tax in that other Contracting State, dividends are exempt from tax in first Contracting State	Source country tax on interest arising in one Contracting State and paid to a resident in the other Contracting State limited to 15% of gross interest	Royalties arising in one Contracting State and paid to resident in the other Contracting State exempt from source country tax; Tax on royalties in Contracting State where recipient is resident limited to 15% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Available for Singapore and Israeli tax forgone under the special incentive laws designed to promote economic development in Singapore and Israel respectively
Article	25	2	8	10	11	12	13	20
Italy	1.1.76 (amended by the 2012 Protocol)	Income tax in Singapore; personal and corporate income taxes, and regional tax on productive activities in Italy	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to resident of the other Contracting State who is the beneficial owner of the dividends, source country tax limited to 10% of gross dividends	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 12.5% of gross interest except for exemption in respect of interest paid on loans arising from agreements concluded between the Governments of the Contracting States	Source country tax on royalties arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to:	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Available for Singapore and Italy tax on dividends, interest and royalties exempted or reduced under Singapore or Italy laws respectively

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
						(i) 15% of gross royalties if received for the use of, or the right to use, any copyright of scientific work, any patent, trade mark, design or model, plan, secret formula or process or for any industrial, commercial or scientific equipment or for information concerning commercial or scientific experience (ii) 20% of gross royalties if received for the use of, or the right to use any copyright of literary or artistic work including cinematographic films or tapes for television or broadcasting		
Article	28	2	8	10	11	12	14	22

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Japan (1995)	1.1.97	Income tax, corporation tax and local inhabitant taxes	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to resident of the other Contracting State who is beneficial owner of the dividends, source country tax limited to: (i) 5% of gross dividends if recipient is company holding at least 25% of dividend-paying company's capital, or (ii) 15% of gross dividends in all other cases	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 10% of gross interest except for exemption in respect of interest paid to Government of either Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to 10% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Available for Singapore tax forgone under the special incentive measures designed to promote economic growth in Singapore only from 14.1.81 to 31.12.95
Article	29	2	8	10	11	12	15	23 and para 4 of Art 5 of Protocol
Jersey	1.1.2014	Income tax	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Exempt from source country tax	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to 12% of gross interest	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to 8% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former, except:	Not available

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					Exempt from source country tax if paid to the Government of the other Contracting State		(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, or if his/her presence in the other Contracting State exceeds 365 days in any 15-month period; only income that is attributable to that fixed base or activities in the other Contracting State may be taxed in that other Contracting State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in the calendar year where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	27	2	8	10	11	12	14, 15	22
Kazakhstan	14.8.2007	Income tax and corporation tax	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	Source country tax limited to (a) 5% of gross dividends if the beneficial owner is a company that directly holds at least 25% of the capital of the company paying the dividends, and (b) 10% of the gross amount of the dividends in all other cases	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 10% of gross interest except for exemption in respect of interest paid to Government of either Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to 10% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Not available

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Article	27	2	8	10	11	12	14	
Korea	1.1.79	Income tax, corporation tax and inhabitant tax	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to resident of the other Contracting State who is beneficial owner of the dividends, source country tax limited to: (i) 10% of gross dividends if recipient is company holding at least 25% of dividend-paying company's capital, or (ii) 15% of gross dividends in all other cases	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 10% of gross interest except for exemption in respect of interest paid to Government of either Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to 15% of gross royalties; this also applies to proceeds from the alienation of any copyright of scientific work, any patent, trade mark, design or model, plan, or secret formula or process	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Available for Singapore and Korean tax on dividends and royalties exempted or reduced under the special incentive laws designed to promote economic development in Singapore and Korea respectively
Article	26	2	8	10	11	12	14	21

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Kuwait	1.1.2005	Corporate income tax, contribution from the net profits of Kuwaiti shareholding companies payable to the Kuwait Foundation for Advancement of Science (KFAS) and the Zakat	Exempt from tax in one Contracting State for international shipping and air transport operations carried on by a resident of the other Contracting State	Dividends arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other Contracting State if such resident is the beneficial owner of the dividends.	Source country tax on interest arising in one Contracting State is limited to 7% of the gross amount of interest if the beneficial owner of the interest is a resident of the other Contracting State. Where the beneficial owner of such interest is the Government of the other Contracting State, the interest will be exempt from tax.	Source country tax on royalties arising in one Contracting State is limited to 10% of the gross amount of royalties if the beneficial owner of the royalties is a resident of the other Contracting State.	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of independent services, persons without fixed base of operation or assignments lasting 183 days or less in a 12-month period	Available for Singapore and Kuwaiti tax that has been exempted or reduced in accordance with the special incentive measures for a specified period of time

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of dependent services assignments lasting 183 days or less in the calendar year, the remuneration is paid by an employer who is a resident of the other Contracting State and the remuneration is not borne by a permanent establishment or fixed base of the employer in the other Contracting State	
Article	29	2	8	10, 23 & Protocol	11	12	14–15	23
Latvia	1.1.2002	Enterprise income tax and personal income tax	Exempt from tax in one Contracting State for international air transport and shipping operations carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to resident of the other Contracting State who is beneficial owner of the dividends, source country tax limited to:	Source country tax on interest arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to 10% of gross interest;	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 7.5% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for:	Not available

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 5% of gross dividends if recipient is company holding at least 25% of dividend-paying company's capital, or (ii) 10% of gross dividends in all other cases (iii) exempt from tax if recipient is the Government of a Contracting State where the dividends are on shares in joint stock company resident in the other Contracting State	Exempt for interest paid to Government of either Contracting State		(i) in the case of independent services, persons without fixed base of operation or stays for less than 183 days in any 12-month period (ii) in the case of dependent services, assignments lasting 183 days or less in a 12-month period and the remuneration is not borne by a permanent establishment of the employer in the other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Article	28	2	8	10	11	12	14–15	
Libya	1.1.2011	Income tax in Singapore; income tax, defence tax and real estate tax on income in Libya	Profits from international air transport and shipping operations subject to tax only in the Contracting State in which the place of effective management of the enterprise is situated	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to:	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross interest	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	Available only for Libyan tax forgone on exempted income derived by Libyan residents

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 5% of gross dividends if the beneficial owner is a company that holds directly at least 10% of the capital of the company paying the dividends	Exempt from source country tax if paid to the Government of the other Contracting State or any other government institution thereof as may be agreed between the authorities of the two States		(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, or if his/her presence in the other Contracting State exceeds 183 days in any 12-month period, only income that is attributable to that fixed base or activities in the other Contracting State may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 10% of gross dividends in all other cases			(ii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in the calendar year where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	29	2	9	11	12	13	15–16	24
Liechtenstein	1.1.15	Income tax in Singapore; personal income tax, corporate income tax, corporation taxes, real estate capital gains tax, wealth tax and coupon tax in Liechtenstein	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Exempt from source country tax if paid by a company resident in one Contracting State to a resident of the other Contracting State	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to 12% of gross interest	Source country tax on royalties derived from one Contracting State by beneficial owner who is resident in the other Contracting State limited to 8% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former, except:	No specific provision

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					Exempt from source country tax if paid to the Government of the other Contracting State		(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities; only income that is attributable to that fixed base may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of independent services, if the individual is present in the other Contracting State for a period or periods exceeding in the aggregate 365 days in any 15-month period; only so much of the income as is derived from the activities performed by that individual in that other Contracting State may be taxed in that other Contracting State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(iii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	27	2	8	10	11	12	14–15	22
Lithuania	1.1.2005	Income tax in Singapore; tax on profits of legal persons and tax on income of natural persons in Lithuania	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to:	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 10% of gross interest;	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 7.5% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	Not available

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 5% of gross dividends if the beneficial owner is a company that holds directly at least 25% of the capital of the company paying the dividends	Exempt from source country tax if interest paid to the Government of the other Contracting State		(i) in the case of independent services, the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities; in that case, only income that is attributable to that fixed base may be taxed in that other Contracting State, or	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 10% of gross dividends in all other cases			(ii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
				Exempt from source country tax if paid to the Government of the other Contracting State in respect of shares in joint stock companies			In respect of dependent services, remuneration derived in respect of employment exercised aboard a ship or an aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that Contracting State	
Article	28	2	8	10	11	12	14–15	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Luxembourg	1.1.97	Income tax on individuals, corporation tax, tax on company directors' fees, capital tax and communal trade tax	Tax reduction of 50% in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to resident of the other Contracting State who is beneficial owner of the dividends, source country tax limited to: (i) 5% of gross dividends if recipient is company holding at least 10% of dividend-paying company's capital, or (ii) 10% of gross dividends in all other cases	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 10% of gross interest except for exemption in respect of interest paid to Government of either Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to 10% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Available for Singapore tax on dividends, interest and royalties reduced or exempted under Singapore laws relating to incentives for the promotion of economic development in Singapore
Article	29	2	8	10	11	12	14	23

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Malaysia (2006)	1.1.2007	Income tax and petroleum tax	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	Source country tax limited to 5% of gross dividends if the beneficial owner directly controls at least 25% of the voting power of the company; 10% in all other cases	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in another Contracting State limited to 10% of gross interest except for exemption for interest paid to Government of either Contracting State	Source country tax on royalties arising in one Contracting State is limited to 8% of the gross amount of royalties if the beneficial owner of the royalties is a resident of the other Contracting State	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except in the case of independent services, persons without fixed base of operation; and in the case of dependent services, assignments lasting 183 days or less in a calendar year and where the remuneration is not borne by a permanent establishment of the employer in the other Contracting State	Available for Singapore and Malaysia; tax reduced or exempted under tax incentives for the promotion of economic development in Singapore and Malaysia respectively
Article	28	2	8	10	11	12	14–15	23
Malta	1.1.2009	Income tax	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Source country tax under the full imputation system limited to the tax chargeable on the profits or income of the company out of which the dividends are paid	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to:	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 10% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	Available for Singapore and Malta; tax reduced or exempted under tax incentives for the promotion of economic development in Singapore and Malta respectively

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					(i) 7% of gross interest if beneficial owner is a bank, or		(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, only income that is attributable to that fixed base may be taxed in that other Contracting State, or	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					(ii) 10% of gross interest in all other cases		(ii) in the case of independent services, if the individual's stay in the other Contracting State exceeds 183 days in any 12-month period, only income that is derived from his/her activities performed in that other Contracting State may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					Exempt from source country tax if paid to the Government of the other Contracting State		(iii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	27	2	8	10	11	12	14–15	22

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Mauritius	1.1.98	Income tax	Exempt from tax in one Contracting State for international air transport operations and tax reduction of 50% in one Contracting State for international shipping operations of enterprise carried on by a resident of the other Contracting State	Dividends exempt from source country tax if paid by company resident in one Contracting State to a resident of the other Contracting State who is beneficial owner of the dividends	Exempt from source country tax if interest arises in one Contracting State and is paid to beneficial owner who is resident in the other Contracting State	Royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State are exempt from source country tax	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of independent services, persons without fixed base of operation (ii) in the case of dependent services, assignments lasting 183 days or less	Available for Singapore and Mauritius tax reduced or exempted under tax incentives for the promotion of economic development in Singapore and Mauritius respectively
Article	28	2	8	10	11	12	14–15	23

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Mexico	1.1.96	Income tax	Exempt from tax in one Contracting State for international air transport operations and tax reduction of 50% for international shipping operations of enterprise carried on by a resident of the other Contracting State	Dividends exempt from source country tax if paid by company resident in one ContractingState to a resident of the other Contracting State who is beneficial owner of the dividends	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to: (i) 5% of gross interest if beneficial owner is a bank, or (ii) 15% of gross interest in all other cases	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 10% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of independent services, persons without fixed base of operation or assignments lasting 183 days or less (ii) in the case of dependent services assignments lasting 183 days or less	Available only for Mexican tax foregone under Mexican laws
Article	28	2	8	10	11	12	14–15	23

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Mongolia	1.1.2005	Income tax in Singapore; individual income tax and corporate income tax in Mongolia	Profits from international air transport and shipping operations subject to tax only in the Contracting State in which the place of effective management of the enterprise is situated	Source country tax on dividendsarising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to:	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to:	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	Available for Singapore and Mongolia; tax reduced or exempted under tax incentives for the promotion of economic development in Singapore and Mongolia respectively

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 5% of gross dividends if the beneficial owner is a company that holds directly at least 25% of the capital of the company paying the dividends	(i) 5% of gross interest if the beneficial owner is a bank or a similar financial institution		(i) in the case of independent services, the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities; in that case, only income that is attributable to that fixed base may be taxed in that other Contracting State, or	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 10% of gross dividends in all other cases	(ii) 10% of gross interest in all other cases		(ii) in the case of independent services, if the individual's stay in the other Contracting State exceeds 183 days in any 12-month period; in that case, only income that is derived from his/her activities performed in that other Contracting State may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				Exempt from source country tax if paid to the Government of the other Contracting State	Exempt from source country tax if paid to Government of the other Contracting State		(iii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							In respect of dependent services, remuneration derived in respect of employment exercised aboard a ship or an aircraft operated in international traffic shall be taxable only in that Contracting State in which the place of effective management of the enterprise is situated	
Article	28	2	8	10	11	12	14–15	23
Morocco	1.1.2015	Income tax in Singapore; income and corporation tax in Morocco	Income from international air transport and shipping operations subject to tax in the Contracting State in which the place of effective management of the enterprise is situated	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to:	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to 10% of gross interest	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to 10% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former, except:	Available for Singapore and Morocco tax reduced or exempted under tax incentives for the promotion of economic development in Singapore and Morocco

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 8% of gross dividends if the beneficial owner is a company that holds directly at least 10% of the capital of the company paying the dividends	Exempt from source country tax if paid to the Government of the other Contracting State		(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities; only income that is attributable to that fixed base may be taxed in that other Contracting State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 10% of gross dividends in all other cases			(ii) in the case of independent services, if the individual is present in the other Contracting State for a period or periods exceeding in the aggregate 135 days in any 12-month period; only so much of the income as is derived from the activities performed by that individual in that other Contracting State may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(iii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article		2	8	10	11	12	14–15	23

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Myanmar	1.1.2002	Income tax	Exempt from tax in one Contracting State for international air transport operations and tax reduction of 50% for international shipping operations of enterprise carried on by a resident of the other Contracting State	Dividends exempt from source country tax if paid by company resident in one Contracting State to a resident of the other Contracting State who is beneficial owner of the dividends, source country tax limited to:	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to:	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to:	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for:	Available for Singapore and Myanmar tax reduced or exempted under tax incentives for the promotion of economic development in Singapore and Myanmar respectively

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 5% of gross dividends if recipient is company holding at least 25% of dividend-paying company's capital, or (ii) 10% of gross dividends in all other cases	(i) 8% of gross interest if beneficial owner is a bank or financial institution, or (ii) 10% of gross interest in all other cases	(i) 10% of gross royalties in consideration for the use of, or the right to use, any patent, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience (ii) 15% of gross royalties in all other cases	(i) in the case of independent services, persons without fixed base of operation or stays for less than 183 days in a fiscal year or remunerated not more than US$12,000 (ii) in the case of dependent services, assignments lasting 183 days or less in the fiscal year and the remuneration is not borne by a permanent establishment of the employer in the other Contracting State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(iii) exempt from tax if recipient is the Government of a Contracting State				
Article	29	2	8	10	11	12	14–15	24
Netherlands	1.1.69	Income tax, wages tax, company tax, dividend tax, tax on directors' fees and capital tax	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in Netherlands to resident of Singapore: (i) dividends exempted from source country tax if recipient is company holding at least 25% of dividend-paying company's capital, or (ii) dividends exempted from source country tax in all other cases	Source country tax on interest arising in one Contracting State and paid to resident in the other Contracting State limited to 10% of interest except for exemption in respect of interest paid to Government of either Contracting State	Royalties arising in one Contracting State and paid to resident in the other Contracting State exempt from source country tax, except for royalties for the use of, or the right to use, any copyright of literary or artistic work, including motion picture films and tapes for television or broadcasting, or sums from the alienation of any right of property giving rise to such royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Available for Singapore tax forgone under the *Economic Expansion Incentives (Relief from Income Tax) Act* on interest and royalties only until 31.12.93. Tax sparing relief ceases to apply if abused.

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Article	29	1	8	10	11	12	15	Para 4 of the superseded Art 24
New Zealand (2010)	1.1.2011	Income tax	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Source country tax on dividends paid by company resident in one Contracting State to beneficial owner who is a resident in the other Contracting State limited to: (i) 5% of gross dividends if the beneficial corporate owner owns directly at least 10% of the voting power of the company, and (ii) 15% of gross dividends in all other cases	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 10% of gross interest Exempt from source country tax if paid to the Government of the other Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties	Employment income derived by an individual resident in one Contracting State from an employment exercised in the other Contracting State subject to tax only in the former except where: (i) the individual's presence in the other Contracting State exceeds 183 days in any 12-month period (ii) the remuneration is paid by an employer who is a resident in the other Contracting State, and	Available for Singapore tax on profits, interest and royalties forgone under the *Economic Expansion Incentives (Relief from Income Tax) Act*

Chapter 22

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(iii) the remuneration is borne by a PE of the employer in the other Contracting State	
Article	25	2	8	10	11	12	14	21
New Zealand (1973)	1.1.74	Income tax and excess retention tax	Exempt from tax in one Contracting State for enterprise carried on by a resident of the other Contracting State	New Zealand tax on dividends paid by company resident in New Zealand to beneficial owner resident in Singapore limited to 15% of gross dividends	Source country tax on interest derived in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 15% of gross interest	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 15% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where in the case of independent services, persons without a fixed base of operation or stayings for less than 183 days in a 12-month period; and in the case of dependent services, assignments lasting 183 days or less in a 12-month period and where the remuneration is not borne by a permanent establishment of the employer in the other Contracting State	Available for Singapore tax on profits, interest and royalties forgone under the *Economic Expansion Incentives (Relief from Income Tax) Act*; provisions apply to prevent abuse.
Article	23	1	7	8	9	10	11 and Art IV of Protocol	19 and Protocol

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Norway (1998)	1.1.2000	National income tax, county municipal income tax, municipal tax on income, national tax relating to income from the exploration for and exploitation of submarine petroleum resources and activities and related work, including pipeline transport of petroleum produced, national tax on remuneration to non-resident artistes	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to resident of the other Contracting State who is beneficial owner of the dividends, source country tax limited to: (i) 5% of gross dividends if recipient is company holding at least 25% of dividend-paying company's capital, or (ii) 15% of gross dividends in all other cases, except that dividends paid by company resident in Norway to Government of Singapore is exempt from Norwegian tax	Source country tax on interest arising in one Contracting State and paid to resident in the other Contracting State limited to 7% of gross interest except for exemption in respect of interest paid to Government of either Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 7% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of independent services, persons without fixed base of operation or assignments lasting 183 days or less (ii) in the case of dependent services, assignments lasting 183 days or less	Available for Singapore tax forgone under the *Economic Expansion Incentives (Relief from Income Tax) Act* and *Income Tax Act* up until 31.12.2000

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				Note: dividends paid by company resident in Singapore to company resident in Norway which owns directly or indirectly at least 25% of dividend-paying company's share capital shall be exempt from Norwegian tax				
Article	29	2	8	10; 24	11	12	14–15	24
Oman (2006)	1.1.2007	Income tax in Singapore; company income tax and profit tax on commercial and industrial establishments in Oman	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Source country tax on dividends arising in one Contracting State and paid to beneficial owner who is resident in another Contracting State limited to 5% of gross dividends;	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in another Contracting State limited to 7% of gross interest;	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 8% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	Available for Singapore and Oman; tax reduced or exempted under tax incentives for the promotion of economic development in Singapore and Oman respectively

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				Exempt from source country tax if paid to the Government of the other Contracting State	Exempt from source country tax if paid to the Government of the other Contracting State		(i) in the case of independent services, the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities; in that case, only income that is attributable to that fixed base may be taxed in that other Contracting State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	27	2	8	10	11	12	14–15	23
Oman (Air transport treaty)	1.1.72	Company income tax and profit tax on commercial and industrial establishments	Exempt from tax in one Contracting State for international air transport operations	No specific provision	Exempt from tax in one Contracting State for interest derived from bank deposits connected with international air transport operations carried on by a resident of the other Contracting State	No specific provision	Income derived from employment exercised aboard an aircraft operated in international traffic shall be taxable only in the State where the air transport enterprise is managed and controlled	No specific provision
Article	7	1	3		3		3	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Pakistan	1.1.87	Income tax, super tax and surcharge	Exempt from tax in one Contracting State for international air transport operations and tax reduction of 50% for international shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to beneficial owner who is a resident of the other Contracting State, source country tax is limited to: (i) 10% of gross dividends if beneficial owner is a company and dividend-paying company is engaged in an industrial undertaking (ii) 12.5% of gross dividends if beneficial owner is a company and dividend-paying company is not engaged in an industrial undertaking	Source country tax on interest arising in one Contracting State and paid to resident in the other Contracting State limited to 12.5% of gross interest	Source country tax on royalties arising in one Contracting State and paid to resident of the other Contracting State limited to 10% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Available for Singapore and Pakistan tax on dividends, interest, royalties or fees for technical services forgone under incentives to promote economic development in Singapore and Pakistan respectively

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(iii) 15% in all other cases				
Article	29	2	8	10	11	12	15	23
Panama	1.1.2012	Income tax	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to:	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross interest	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	No specific provision

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 4% of gross dividends if the beneficial owner is a company holding directly at least 10% of the capital of the dividend-paying company	Exempt from source country tax if paid to the Government of the other Contracting State		(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, or if his/her presence in the other Contracting State exceeds 270 days in any 12-month period, only income that is attributable to that fixed base or activities in the other Contracting State may be taxed in that other Contracting State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 5% of gross dividends in all other cases			(ii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	27	2	8	10	11	12	14–15	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Papua New Guinea	1.1.94	Income taxes including salary or wages tax, additional profits tax on taxable additional profits from mining and petroleum operations, specific gains tax and dividend withholding tax	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	Source country tax limited to 15% where dividend is paid by company resident in one Contracting State to a resident of the other Contracting State	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 10% of gross interest	Source country tax on royalties arising in one Contracting State and paid to resident of the other Contracting State limited to 10% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except, for dependent services, where assignments last 183 days or less, and in the case of independent services, for: (i) persons without fixed base of operation (ii) income that is derived from performance of services for resident or permanent establishment of Contracting State and that exceeds K15,000 or its Singapore dollar equivalent, or (iii) assignments lasting 90 days or less	Available in respect of Papua New Guinea tax exempted or reduced under the Papua New Guinea *Income Tax Act 1959* and the *Industrial Development (Incentives to Pioneer Industries) Act*
Article	29	2	8	10	11	12	14–15	25

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Philippines	1.1.78	Income taxes	Tax charged in respect of international air transport and shipping operations limited to the lesser of:	For dividends paid by company which is resident in one Contracting State to beneficial owner who is a resident of the other Contracting State, source country tax limited to:	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 15% of gross interest	Source country tax on royalties arising in one Contracting State and paid to resident of the other Contracting State:	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for:	Available for Singapore and Philippine taxes forgone under the special incentive laws designed to promote economic development in Singapore and the Philippines respectively

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
			(i) 1.5% of gross revenues derived from sources in Contracting State, or	(i) 15% of gross dividends if recipient is company or partnership holding at least 15% of Philippine company's voting stock during part of taxable year which precedes date of payment of dividends and during the whole of its prior taxable year		(i) in the case of the Philippines, limited to 15% of gross royalties where royalties are paid by an enterprise registered with the Philippine Board of Investments and engaged in preferred activities and where royalties are paid in respect of cinematographic films or tapes for television or broadcasting	(i) in the case of professional services, assignments lasting 90 days or less	
			(ii) the lowest rate of Philippine tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State	(ii) 25% of gross dividends in all other cases		(ii) in the case of Singapore, where royalties are approved under the *Economic Expansion Incentives (Relief from Income Tax) Act*, they shall be exempt	(ii) in other cases, assignments lasting 183 days or less	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
						(iii) limited to 25% in all other cases		
Article	27	2	8	10	11	12	14	22
Poland (2014)	1.1.2015	Income tax in Singapore; personal and corporate income taxes in Poland	Income from international air transport and shipping operations subject to tax in the Contracting State in which the place of effective management of the enterprise is situated	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to: (i) 5% of gross dividends if the beneficial owner is a company that holds directly at least 10% of the capital of the company paying the dividends	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to 5% of gross interest Exempt from source country tax if paid to the Government of either Contracting State and certain banks	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State, limited to: (i) 2% of gross royalties paid for the use of, or the right to use, any industrial, commercial or scientific equipment	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former, except: (i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities; only income that is attributable to that fixed base may be taxed in that other Contracting State	No specific provision

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 10% of gross dividends in all other cases		(ii) 5% of the gross amount of the royalties in all other cases	(ii) in the case of independent services, if the individual is present in the other Contracting State for a period or periods exceeding in the aggregate 365 days in any 15-month period; only so much of the income as is derived from the activities performed by that individual in that other Contracting State may be taxed in that other Contracting State	

Chapter 22

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				Exempt from source country tax if paid to the Government of the other Contracting State			(iii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	28	2	8	10	11	12	14–15	22

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Poland (1993)	1.1.94	Personal and corporate income taxes	Exempt from tax in one Contracting State for international air transport operations and tax reduction of 50% for international shipping operations of enterprise carried on by a resident of the other Contracting State	Source country tax limited to 10% of gross dividends for dividends paid by company resident in one Contracting State to beneficial owner who is a resident of the other Contracting State, except source country tax exemption for dividends paid to Government of either Contracting State on shares held in joint stock companies of the other State	Source country tax on interest arising in one Contracting State and paid to resident in the other Contracting State limited to 10% of gross interest except for exemption in respect of interest paid to Government of either Contracting State	Source country tax on royalties arising in one Contracting State and paid to resident of the other Contracting State limited to 10% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) persons without fixed base of operation or assignments lasting 90 days or less (for independent services) (ii) assignments lasting 183 days or less (for dependent services)	Available for Singapore tax on dividends, interest or royalties forgone under Singapore laws designed to promote economic development
Article	29	2	8	10	11	12	14–15	24

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Portugal	1.1.2003	Personal income tax, corporate income tax and the local surtax on corporate income tax	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	Source country tax limited to 10% of gross dividends for dividends paid by company resident in one Contracting State to beneficial owner who is a resident of the other Contracting State, except source country tax exemption for dividends paid to Government of either Contracting State	Source country tax on interest arising in one Contracting State and paid to resident in the other Contracting State limited to 10% of gross interest. Exemption would apply if: (a) the Government of either Contracting State is:	Source country tax on royalties arising in one Contracting State and paid to resident of the other Contracting State limited to 10% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of independent services, persons without fixed base of operation and stay for periods (in aggregate) for less than 183 days within a 12-month period	Available for Singapore tax forgone on dividends under the tax treaty

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					(i) the debtor of interest (ii) the recipient of the interest payment, or (b) interest is paid to an institution in connection with any financing granted under an agreement between the Government of the Contracting States, or		(ii) in the case of dependent services, assignments lasting 183 days or less over a 12-month period where remuneration is not paid by an employer which is a resident in the latter Contracting State and where the remuneration is not borne by a PE or fixed base in the latter Contracting State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					(c) if the interest payments were in respect of loans or credit made by designated institutions			
Article	29	2	8	10	11	12	14–15	24
Qatar	1.1.2008	Income taxes	Exempt from tax in one Contracting State for international shipping operations of an enterprise carried on by a resident of the other Contracting State	Dividends paid by a company that is a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other Contracting State.	Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.	Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for:	Available for residents of Singapore and Qatar for the first 10 years for which the treaty is effective, subject to extension by both States

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					However, such interest may also be taxed in the Contracting State in which it arises according to the laws of that Contracting State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 5% of the gross amount of the interest.	However, such royalties may also be taxed in the Contracting State in which they arise according to the laws of that Contracting State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10% of the gross amount of the royalties.	(i) in the case of independent services, he/she has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities; in that case, only income that is attributable to that fixed base may be taxed in that other Contracting State, or (ii) in the case of dependent personal services, the recipient is present in the other State for a period or periods not exceeding an aggregate of 183 days within any 12-month period	
Article	28	2	8	10	11	12	14–15	23

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Romania	1.1.2004	Tax on individuals' income, profits, salaries and other similar remunerations, agricultural income and dividends	Profits from international air transport and shipping operations subject to tax in the Contracting State in which the place of effective management of the enterprise is situated	For dividend paid by company resident in one Contracting State to beneficial owner who is a resident in the other Contracting State, source country tax limited to 5% of gross dividends except for exemption in respect of dividends paid to Government of either Contracting State	Source country tax on interest arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to 5% of gross interest except for exemption for interest paid to Government of either Contracting State Notwithstanding the above, exemption from tax in Romania for interest arising in Romania and paid to Singapore resident in respect of:	Source country tax on royalties arising in one Contracting State and paid to beneficial owner resident in the other Contracting State limited to 5% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of independent services, persons without fixed base of operation, and	Not available

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					(a) external credit received by and/or guaranteed by the Government of Romania, the National Bank of Romania and designated financial or banking institutions, and (b) bonds issued by the Government of Romania on the capital market		(ii) in the case of dependent services, assignments lasting 183 days or less in any 12-month period in the calendar year and the remuneration is not borne by a resident of the other Contracting State or a permanent establishment/fixed base of the employer in the other Contracting State	
Article	30	2	8	10	11	12	14–15	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Russian Federation	1.1.2010	Income tax in Singapore; tax on profits of enterprises and organisations and income tax on individuals in the Russian Federation	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to:	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 7.5% of gross interest;	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 7.5% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	Available for Russia; tax reduced or exempted under tax incentives for the promotion of economic development in Russia for the first five years for which the treaty is effective, subject to extension by both States

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 5% of gross dividends if the beneficial owner is the Government of the other Contracting State	Exempt from source country tax if paid to the Government of the other Contracting State		(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, only income that is attributable to that fixed base may be taxed in that other Contracting State, or	

Chapter 22

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 5% of gross dividends if the beneficial owner is a company that holds directly at least 15% of the capital of the company paying the dividends and has invested at least US$100,000 or its equivalent in other currencies in it			(ii) in the case of independent services, if the individual's presence in the other Contracting State exceeds 90 days in any 12-month period, only income that is derived from his/her activities performed in that other Contracting State may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(iii) 10% of gross dividends in all other cases			(iii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	

Chapter 22

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							In respect of dependent services, remuneration derived in respect of employment exercised aboard a ship or an aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that Contracting State.	
Article	28	2	8	10	11	12	14–15	23
Saudi Arabia	1.1.2012	Income tax in Singapore; Zakat and income tax (including the natural gas investment tax) in Saudi Arabia	Profits from international air transport and shipping operations subject to tax only in the Contracting State in which the place of effective management of the enterprise is situated	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross dividends	Source country tax on income from debt-claims arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross income from debt-claims	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 8% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	Available for tax exempted or reduced for the promotion of economic development in Singapore and Saudi Arabia. This will apply for the first five years for which the Agreement is in effect.

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Agreement	Effective date/year of *assessment* (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, or if his/her presence in the other Contracting State exceeds 183 days in any 12-month period, only income that is attributable to that fixed base or activities in the other Contracting State may be taxed in that other Contracting State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	29	2	8	10	11	12	14–15	23
Saudi Arabia (Air transport treaty)	1.1.80	Income tax on companies	Exempt from tax in one Contracting State for international air transport operations of enterprise carried on by a resident of the other Contracting State	No specific provisions on these matters as this treaty is restricted to mutual tax exemption of income from international air transport operations				
Article	5	1	3					

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Slovak Republic	1.1.2007	Income tax in Singapore; tax on income of individuals and tax on income of legal persons in Slovak Republic	Profits from international air transport and shipping operations subject to tax only in the Contracting State in which the place of effective management of the enterprise is situated	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to: (i) 5% of gross dividends if the beneficial owner is a company that holds directly at least10% of the capital of the company paying the dividends, or	Exempt from source country tax if interest arising in one Contracting State is paid to a beneficial owner who is resident in the other Contracting State	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 10% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where: (i) in the case of independent services, the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities; in that case, only income that is attributable to that fixed base may be taxed in that other Contracting State, or	Not available

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 10% of gross dividends in all other cases			(ii) in the case of independent services, the individual's stay in the other Contracting State exceeds 183 days in any 12-month period; in that case, only income that is derived from his/her activities performed in that other Contracting State may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				Exempt from source country tax if paid to the Government of the other Contracting State			(iii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	27	2	8	10	11	12	14–15	
Slovenia	1.1.2011	Income tax in Singapore; tax on income of legal persons and tax on income of individuals in Slovenia	Profits from international air transport and shipping operations subject to tax only in the Contracting State in which the place of effective management of the enterprise is situated	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross dividends	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross interest	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	Available for Slovenia for income exempt from tax in Slovenia

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					Exempt from source country tax if paid to the Government of the other Contracting State		(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, or if his/her stay in the other Contracting State exceeds nine months in any 12-month period, only income that is attributable to that fixed base or activities in the other Contracting State may be taxed in that other Contracting State	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	28	2	8	10	11	12	14–15	23
South Africa	1.1.99	Normal tax, non-resident shareholders' tax and secondary tax on companies	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by companyresident in one Contracting State to beneficial owner who is a resident of the other Contracting State, source country tax limited to:	Exempt from source country tax for interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties	Income derived by individualresident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for:	Not available

Chapter 22

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 5% of gross dividends if recipient is company holding at least 10% of dividend-paying company's capital, or (ii) 15% of gross dividends in all other cases			(i) in the case of dependent services, assignments lasting 183 days or less (ii) in the case of independent services, persons without fixed base of operation or assignments lasting 183 days or less	
Article	27	2	8	10	11	12	13–14	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Spain	1.1.2013	Income tax in Singapore; income tax on individuals, corporation tax, income tax on non-residents and local taxes on income in Spain	Profits from international air transport and shipping operations subject to tax only in the Contracting State in which the place of effective management of the enterprise is situated	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to: (i) 0% of gross dividends if the beneficial owner is a company holding directly at least 10% of the capital of the dividend-paying company (ii) 5% of gross dividends in all other cases	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross interest Exempt from source country tax if paid to the Government of the other Contracting State	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former, except in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE of the employer in the other Contracting State	Not available
Article	26	2	8	10	11	12	14	21

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Sri Lanka	1.1.78	Income tax	Exempt from tax in one Contracting State for international air transport operations and tax reduction of 50% for international shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in Sri Lanka to beneficial owner who is resident in Singapore, source country tax limited to 15% of gross dividends	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 10% of gross interest except for exemption in respect of: (i) interest paid to Government of either Contracting State (ii) interest paid to beneficial owner which is a banking or financial institution of either Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 15% of gross royalties for royalties received for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process or for the use of, or the right to use, any industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience; otherwise normal rates	Income derivedby individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for assignments lasting 183 days or less	Available only for Sri Lankan tax exempted or reduced on dividend and interest under the special incentive laws designed to promote economic development in Sri Lanka
Article	26	2	8	10	11	12	13	20

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Sweden	1.1.67	State income tax, including sailors tax and coupon tax, tax on undistributed corporate profits and on distribution in connection with reduction of share capital or winding-up, tax on public entertainers, communal income tax and State capital tax	Exempt from tax in one Contracting State for international air transport operations and tax reduction of 50% for international shipping operations of enterprise carried on by a resident of the other Contracting State	Swedish tax on dividends paid by company resident in Sweden to beneficial owner who is a resident of Singapore limited to: (i) 10% of gross dividends if recipient is a parent company, or (ii) 5% of gross dividends if recipient is company holding at least 10% of dividend-paying company's capital	Source country tax on interest derived from one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to: (i) 10% of gross interest if the interest is derived by a financial institution and paid by an enterprise which engages in an industrial undertaking (ii) 15% of gross interest in other cases,	Royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State are exempt from source country tax, except for royalties in respect of literary or artistic copyrights, or motion picture films, cinematograph or tapes for television or broadcasting or operation of a mine, oil well, quarry, or any other place of extracting natural resources	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of dependent services, remuneration for services performed on aircraft in international traffic, and (ii) in the case of independent services, assignments lasting 183 days or less	Available up to 31.12.2000 for Singapore tax forgone under the incentive provisions contained in Singapore law designed to promote economic development in Singapore

Chapter

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
					except for exemption in respect of interest paid to Government of either Contracting State			
Article	23	1	5–5A	7	8	9	12 and 15	19
Switzerland (2012)	1.1.2013	Income tax in Singapore; federal, cantonal and communal taxes on income in Switzerland	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to:	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross interest;	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	Not available

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 5% of gross dividends if the beneficial owner is a company that holds directly at least 10% of the capital of the company paying the dividends	Exempt from source country tax if paid to a banking enterprise or the government of the other Contracting State		(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, or if his/her stay in the other State exceeds 300 days within any 12-month period, only income that is attributable to that fixed base, or activities performed in that other State, may be taxed in that other Contracting State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 15% of gross dividends in all other cases			(ii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in the calendar year where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	28	2	8	10	11	12	14-15	23

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Switzerland (1976) (terminated)	1.1.75	Federal, cantonal and communal taxes on income and capital	Exempt from tax in one Contracting State for international air transport operations and tax reduction of 50% for international shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to beneficial owner who is a resident of the other Contracting State, source country tax limited to: (i) 10% of gross dividends if recipient is company holding at least 25% of dividend-paying company's capital, or (ii) 15% of gross dividends in all other cases	Source country tax on interest derived from one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 10% of gross interest except that interest arising in Singapore and paid to resident of Switzerland is exempt from Singapore tax if loan or indebtedness is approved by Finance Minister of Singapore	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties except that royalties arising in Singapore and paid to a resident in Switzerland are exempt from Singapore tax if approved by the Finance Minister of Singapore tax	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Available for Singapore tax forgone on dividends and interest under the tax treaty
Article	26	2	8	10	11	12	14–15	22

Chapter 22

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Taiwan (Republic of China)	30.12.81	Income tax	Exempt from tax in one Contracting State for international air transport operations and tax charged in respect of international shipping operations limited to 2% of gross revenue for enterprise carried on by a resident of the other Contracting State	For dividends paid by company which is a resident in one Contracting State to beneficial owner who is a resident in the other Contracting State, source country tax restricted to amount which together with corporate income tax payable on profits of dividend-paying company constitute 40% of taxable income	Not covered by agreement	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 15% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for assignments lasting 183 days or less	Available for Singapore and Taiwanese tax forgone under laws designed to promote economic development in Singapore and Taiwan respectively (Note: To eliminate treaty shopping, Taiwan has announced that it will not give tax sparing credits to Taiwanese companies investing in China via Singapore)
Article	22	2	8	10		11	12	18

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Thailand	1.1.76	Income tax and petroleum income tax	Exempt from tax in one Contracting State for international air transport operations and tax reduction of 50% for international shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to beneficial owner who is a resident of the other Contracting State, source country tax limited to 20% of gross dividends if recipient is company holding at least 25% of voting shares of dividend-paying company	Source country tax on interest arising in one Contracting State and paid to resident in the other Contracting State limited to: (i) 10% of gross interest if received by any financial institution (including insurance company) (ii) 25% of gross interest in other cases, except for exemption in respect of interest paid to Government of either Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 15% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Available only for Thai tax forgone under the special incentive laws designed to promote economic development in Thailand
Article	28	2	8	10	11	12	14	23

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Turkey	1.1.2003	Income tax, corporation tax and levy imposed on such taxes	Exempt from tax in one Contracting State for international air transport operations and tax reduction of 50% for international shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by a company resident in one Contracting State to beneficial owner who is a resident of the other Contracting State, source country tax limited to: (i) 10% of gross dividends if recipient is a company holding at least 25% of the capital of the dividend-paying company	Source country tax on interest arising in one Contracting State and paid to a resident in the other Contracting State limited to: (i) 7.5% of gross interest if received by any financial institution	Source country tax on royalties arising in one Contracting State and paid to the beneficial owner who is a resident in the other Contracting State limited to 10% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of independent services, persons without a fixed base of operation or on assignments lasting 183 days or less within a calendar year	Available only for Turkish tax forgone under the special incentive measures for promotion of economic development in Turkey but reliefs would cease from YA 2013

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 15% of gross dividend in other cases, except for exemption in respect of dividends paid to the Government of the other Contracting State	(ii) 10% of gross interest in other cases, except for exemption in respect of interest paid to the Government of the other Contracting State		(ii) in the case of dependent services, assignments lasting 183 days or less in the calendar year, the remuneration is paid by a non-resident employer, and the remuneration is not paid by/ on behalf of a PE or fixed base of the employer in the latter Contracting country	
Article	28	2	8	10	11	12	14–15	23
Ukraine	1.1.2010	Income tax in Singapore; individual income tax and tax on profits of enterprises in Ukraine	Profits from international air transport and shipping operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to:	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 10% of gross interest;	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 7.5% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	Available only for Ukrainian tax foregone under Ukrainian laws

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(i) 5% of gross dividends if the beneficial owner is a company that holds directly at least 20% of the capital of the company paying the dividends	Exempt from source country tax if paid to the Government of the other Contracting State, or the Central Bank thereof, or any other government institution thereof or statutory body as may be agreed between the authorities of the two States		(i) in the case of independent services, the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities; in that case, only income that is attributable to that fixed base may be taxed in that other Contracting State, or	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 15% of gross dividends in all other cases			(ii) in the case of independent services, if the individual's stay in the other Contracting State exceeds 183 days in any 12-month period; in that case, only income that is derived from his/her activities performed in that other Contracting State may be taxed in that other Contracting State	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				Exempt from source country tax if the beneficial owner is the Government of the other contracting state, or the Central Bank thereof, or any other government institution thereof or statutory body as may be agreed between the authorities of the two States			(iii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State	
Article	27	2	8	10	11	12	14–15	22

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
United Arab Emirates	1.1.93	Income tax and corporation tax	Exempt from tax in one Contracting State for international shipping operations of enterprise carried on by a resident of the other Contracting State	Source country tax limited to 5% of gross dividends where dividends paid by company resident in one Contracting State to beneficial owner resident in the other Contracting State	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 7% except for exemption in respect of interest paid to Government of either Contracting State	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of independent services, persons without fixed base of operation or assignments lasting 183 days or less (ii) in the case of dependent services, assignments lasting 183 days or less	Available for Singapore tax forgone under the provisions concerning the special incentive measures to promote economic development in Singapore
Article	28	2	8	10	11	12	13–14	23

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
United Arab Emirates (Air transport treaty)	1.1.71	Income tax	Exempt from tax in one Contracting State for international air transport operations of enterprise carried on by a resident of the other Contracting State	No specific provisions on these matters as this treaty is restricted to mutual tax exemption of income from international air transport operations	Exempt from tax in one Contracting State for interest derived from bank deposits connected with international air transport operations carried on by a resident of the other Contracting State	No specific provision	Income derived from employment exercised aboard an aircraft operated in international traffic shall be taxable only in the State of residence of the air transport enterprise	No specific provision
Article	6	1	3		3		3	
United Kingdom (updated by 2012 Protocol)	1.1.98	Income tax, corporation tax and capital gains tax	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to beneficial owner who is a resident of the other Contracting State, source country tax limited to: (i) up to 31 December 2012: 5% of gross dividends if recipient is company holding at least 10% of dividend-paying company's capital, or (ii) up to 31 December 2012: 15% of gross dividends in all other cases	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to: (i) 15% of gross interest where interest arises or accrues on or before 31 December 1999 (ii) up to 31 December 2012: 10% of gross interest in other cases	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to: (i) 15% of gross royalties where royalties arise or accrue on or before 31 December 1999 (ii) up to 31 December 2012: 10% of gross royalties in any other case	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for: (i) in the case of independent services, persons without fixed base of operation or assignments lasting 183 days or less (ii) in the case of dependent services, assignments lasting 183 days or less	Available for Singapore tax forgone under the *Economic Expansion Incentives (Relief from Income Tax) Act* up to 31.12.2001

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(iii) from 1 January 2013: exempt from source country tax	(iii) from 1 January 2013: 5% of gross interest in other cases except for exemption in respect of interest paid to Government of either Contracting State	(iii) from 1 January 2013: 8% of gross interest in any other case		
Article	29	2	8	10	11	12	14–15	23
United States of America (Air transport and shipping operations) No specific article	1.1.87	Income tax	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	No specific provisions on these matters as this treaty is restricted to mutual tax exemption of income from international air transport or shipping operations				
Uzbekistan	1.1.2009	Income tax in Singapore; tax on income of legal persons and tax on income of individuals in Uzbekistan	Profits from international air transport, shipping, road and railway operations derived by an enterprise of a Contracting State subject to tax only in that Contracting State	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross dividends	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 5% of gross interest	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 8% of gross royalties	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except where:	Not available

Chapter 22

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(i) in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, only income that is attributable to that fixed base may be taxed in that other Contracting State, or	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(ii) in the case of independent services, if the individual's stay in the other Contracting State exceeds 183 days in any 12-month period, only income that is derived from his/her activities performed in that other Contracting State may be taxed in that other Contracting State	

Chapter 22

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
							(iii) in the case of dependent services, if the individual's presence in the other Contracting State exceeds 183 days in any 12-month period where remuneration is paid by an employer who is a resident in the other Contracting State and where the remuneration is borne by a PE or fixed base of the employer in the other Contracting State In respect of dependent services, remuneration derived in respect of employment exercised aboard a ship or an aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that Contracting State.	
Article	27	2	8	10	11	12	14–15	

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Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
Vietnam (updated by 2013 Protocol)	1.1.94	Personal income tax, profit tax, profit remittance tax, foreign petroleum subcontractor tax and foreign contractor tax	Exempt from tax in one Contracting State for international air transport and shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to beneficial owner who is a resident in the other Contracting State, source country tax limited to:	Source country tax on interest arising in one Contracting State and paid to resident in the other Contracting State limited to :	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to:	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for:	Available for Singapore and Vietnamese tax forgone under the *Income Tax Act* and the *Economic Expansion Incentives (Relief from Income Tax) Act* and the *Law on Foreign Investment in Vietnam* respectively
				(i) 5% of gross dividends if beneficial owner has directly or indirectly contributed more than 50% of dividend-paying company's capital or more than US$10 million	(i) 10% of gross interest	(i) 5% of gross royalties for royalties for the use of, or the right to use any patent, design or model, plan, secret formula or process or industrial, commercial or scientific equipment, or information concerning industrial, commercial or scientific experience	(i) up to 31 December 2013: in the case of independent services, persons without fixed base of operation	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing relief
				(ii) 7% of gross dividends if beneficial owner has directly or indirectly contributed between 25% and 50% of dividend-paying company's capital	(ii) with effect from 1 January 2014, if Vietnam, in any DTA with any other State, provides for a rate of less than 10% on the gross amount of interest, then that lower rate shall apply in the DTA between Singapore and Vietnam,	(ii) up to 31 December 2013: 15% in other cases	(ii) from 1 January 2014: in the case of independent services, if the individual has a fixed base regularly available to him/her in the other Contracting State for the purpose of performing his/her activities, or if his/her stay in the other State exceeds 183 days within any 12-month period, only income that is attributable to that fixed base, or activities performed in that other State, may be taxed in that other Contracting State	
				(iii) 12.5% of gross dividends in all other cases	except for exemption in respect of interest paid to Government of either Contracting State	(iii) from 1 January 2014: 10% in other cases	(iii) in the case of dependent services, assignments lasting 183 days or less	
Article	29	2	8	10	11	12	14–15	24

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Law: *Economic Expansion Incentives (Relief from Income Tax) Act.*

CASE TABLE

This is a complete list of all cases referred to in the text. All references are to paragraph (¶) numbers of the text in which the citation occurs.

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Paragraph

H

I

J

K

Paragraph

L

M

N

O

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Paragraph

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COMPARATIVE TABLE

The references to the Income Tax Act (Cap 134) which appear in the Section Finding List beginning on page 917 are to the 2004 Edition of the Act. The Comparative Table below shows the differences between the 2004 and 2008 Editions.

INCOME TAX ACT (CHAPTER 134)

The following provisions in the 2004 Revised Edition of the Income Tax Act have been renumbered by the Law Revision Commissioners in the 2008 Revised Edition.

This Comparative Table is provided for the convenience of users. It is not part of the Income Tax Act.

2008 Edition		2004 Edition	
10C—	(1) to (6)	**10C—**	(1) to (6)
	—		(7) (*Deleted by Act 7/2007*)
	(8) to (12)		(8) to (12)
13F—	(1) (*a*) and (*b*)	**13F—**	(1) (*a*) and (*b*)
	(*c*) (i) and (ii)		(*c*) (i) and (ii)
	—		(iii) and (iv) (*Deleted by Act 49/2004*)
	(2) to (6)		(2) to (6)
13G—	(1) and (2)	**13G—**	(1) and (2)
	(3)		(2A)
	(4)		(3)
	(5)		(4)
	—	**13M**	(*Repealed by Act 53/2007*)
13N—	(1) (*a*)	**13N—**	(1) (*a*)
	—		(*b*) (*Spent*)
	(*b*)		(*c*)
	(2) to (7)		(2) to (7)
13O—	(1)	**13O—**	(1)
	(2)		(1A)
	(3)		(2)
	(4)		(3)
16—	(1) to (12)	**16—**	(1) to (12)
	(13)		(12A)
	(14)		(13)
19—	(1) to (1B)	**19—**	(1) to (1B)
	(2) (*a*) and (*b*)		(2) (*a*) and (*b*)
	—		(*c*) and (*d*) (*Spent*)
	(*c*)		(*e*)
	(*d*)		(*f*)
	(3) to (7)		(3) to (7)
19A—	(1) to (13)	**19A—**	(1) to (13)
	(13A)		(13A)

2008 Edition		2004 Edition	
	(13B)		—
	(14) to (16)		(14) to (16)
19C—	(1) to (3)	**19C—**	(1) to (3)
	—		(4) (*Deleted by Act 7/2007*)
	(4)		(5)
	(5)		(6)
	(6)		(7)
	(7)		(8)
	—		(9) (*Deleted by Act 7/2007*)
	(8)		(10)
	(9)		(11)
	(10)		(11A)
	(11)		(11B)
	(12)		(11C)
	(13)		(12)
19D—	(1) to (12)	**19D—**	(1) to (12)
	(13)		(12A)
	(14)		(12B)
	(15)		(13)
	(16)		(14)
26—	(1) to (9)	**26—**	(1) to (9)
	(10)		(9A)
	(11)		(9B)
	(12)		(10)
37—	(1) to (4)	**37—**	(1) to (4)
	(5)		(4A)
	(6)		(5)
	—		(6) (*Deleted by Act 34/2005*)
	(7) to (14)		(7) to (14)
	(15)		(14A)
	(16)		(15)
	(17)		(16)
	(18)		(16A)
	(19)		(17)
	—		(18) (*Deleted by Act 34/2005*)
43I—	(1) to (3)	**43I—**	(1) to (3)
	—		(4) (*Deleted by Act 53/2007*)
	—		(5) (*Deleted by Act 53/2007*)
	(6) to (9)		(6) to (9)
	—	**43L—**	(*Repealed by Act 7/2007*)
51—	(1)	**51—**	(1)
	—		(2) and (3) (*Deleted by Act 49/2004*)
	(2)		(4)

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2008 Edition	2004 Edition
(3)	(5)
—	(6) (*Deleted by Act 49/2004*)
62— (1) to (3)	**62**— (1) to (3)
—	(4) (*Deleted by Act 49/2004*)
(4)	(5)
(5)	(6)
—	(7) (*Deleted by Act 49/2004*)
—	(8) (*Deleted by Act 7/2007*)
—	**71A**— (*Repealed by Act 49/2004*)
78— (1) to (6)	**78**— (1) to (6)
(7)	(6A)
(8)	(7)
(9)	(8)
(10)	(9)
(11)	(10)
(12)	(10A)
(13)	(10B)
(14)	(11)
(15)	(12)
(16)	(13)
79— (1) and (2)	**79**— (1) and (2)
(3)	(2A)
(4)	(3)
(5)	(3A)
(6)	(4)
(7)	(4A)
(8)	(4B)
(9)	(4C)
(10)	(4D)
(11)	(5)
(12)	(6)
93— (1) and (5)	**93**— (1) and (5)
—	(6) (*Deleted by Act 49/2004*)
(6)	(7)
(7)	(8)
(8)	(9)
FIFTH SCHEDULE	FIFTH SCHEDULE
1 to 6	1 to 6
—	7 (*Deleted by Act 49/2004*)
—	8 (*Deleted by Act 49/2004*)
7 (*a*)	9 (*a*)
—	(*b*) (*Deleted by Act 49/2004*)
(*b*)	(*c*)

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Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act 2010

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Economic Expansion Incentives (Relief from Income Tax) (Qualifying Activity) Regulations

Electronic Transactions Act (Cap 88)

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Goods and Services Tax (Board of Review) Regulations

Goods and Services Tax (Excluded Transactions) Order

Goods and Services Tax (General) Regulations

Goods and Services Tax (Imports Relief) Order

Goods and Services Tax (International Services) Order

Goods and Services Tax Voucher Fund Act 2012 (Commencement) Notification 2013

Income Tax Act (Cap 134)

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Income Tax (Amendment) Act 2012

Income Tax (Amendment) Bill 2012

Income Tax (Amendment) (Exchange of Information) Act 2009

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Income Tax (Approved Unit Trust) Regulations

Income Tax (Automation Equipment) Rules 2004

Income Tax (Computer Gifts — Educational and Research Institutions) Rules

Income Tax (Concessionary Rate of Tax for Approved Finance and Treasury Centre) Regulations

Income Tax (Concessionary Rate of Tax for Approved Global Trading Companies) Regulations 2003

Income Tax (Concessionary Rate of Tax for Approved Headquarters Company) Regulations

Income Tax (Concessionary Rate of Tax for Approved Offshore Composite Insurance Companies) Regulations

Income Tax (Concessionary Rate of Tax for Approved Offshore General Insurance Companies) Regulations

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Income Tax (Concessionary Rate of Tax or Exemption for Income derived from Debt Securities) Regulations

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Income Tax (Exemption of Income from Syndicated Offshore Credit and Underwriting Facilities) Regulations 2003

Income Tax (Exemption of Income from Syndicated Offshore Facilities) Regulations 2003

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Income Tax (Exemption of Interest and Other Payments for Economic and Technological Development) Notification 2000

Income Tax (Exemption of Interest and Other Payments for Economic and Technological Development) (No 2) Notification 2000 (revoked)

Income Tax (Exemption of Royalties and Other Payments for Economic and Technological Development) (Amendment) Notification 2002

Income Tax (Exemption of Royalties and Other Payments for Economic and Technological Development) (No 2) Notification 2003

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Limited Partnerships Act (Cap 163B)

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