

# **IRAS e-Tax Guide**

## **Ascertainment of Income from Business of Making Investment (Second Edition)**



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# **Ascertainment of Income from Business of Making Investment**

## **1 Aim**

- 1.1 This e-Tax Guide gives details on how income from the business of making investment is computed based on the provisions of Section 10E of the Income Tax Act (ITA) from the Year of Assessment (YA) 1996. This e-Tax guide consolidates the four e-Tax guides issued previously<sup>1</sup> on the provisions of Section 10E.
- 1.2 It will be relevant to you if you are in the business of making investment.

## **2 At a Glance**

- 2.1 A business of making investment is different from a business of dealing in investments or passive holding of investments. Based on the facts and business activities of the case, a company, trustee of property trust, partner of an LLP or LP may be considered as carrying on a business of making investment. Its income would then be taxable under section 10(1)(a) of ITA but the provisions of section 10E would apply from YA 1996 to determine the income to be brought to tax.
- 2.2 Investment would include securities and immovable properties. Business of making investment includes a business of letting immovable properties and a business of letting service apartments.
- 2.3 Under section 10E, the deduction of any outgoings or expenses and capital allowances are limited to the income derived from investments which produce income in that YA. The balance of any outgoings or expenses and capital allowances [except for industrial building allowance (IBA)], which cannot be set off in that YA shall be disregarded.

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<sup>1</sup> This e-Tax guide is a consolidation of four previous e-Tax guides on Section 10E:

- a) "Determination of taxable income derived by a company from its business of the making of investments – Section 10E of the Singapore Income Tax Act (ITA)" published on 22 Jan 1996.
- b) "Section 10E of the Singapore Income Tax Act – Addendum to the administrative practice note published on 22 Jan 1996" published on 30 Jun 1997.
- c) "Determination of taxable income derived by a company from its business of letting service apartments – applicability of Section 10E of the Income Tax Act" published on 31 Dec 1997.
- d) "Section 10E of the Income Tax Act (Addendum to Practice Notes 1996/IT/2, 1997/IT/3 and 1997/IT/5)" published on 4 May 2005.

### 3 Background

- 3.1 The deduction of expenses against passive investment income is more restrictive than trade income. Any excess of deductible expenses over the passive investment income for any YA are not deductible against other income. They are also not available for deduction against future income. In addition, capital allowances would not be given.
- 3.2 Before the enactment of section 10E, unless a company carried on the business of trading in investments, investment income was taxed as passive income regardless of the company's involvement or activities undertaken to derive such income.
- 3.3 To recognise that companies may hold investments not for sale but to derive investment income as a trade, the business of making investments was introduced with the enactment of section 10E. Section 10E prescribes the tax treatment of companies engaged in the business of making investments. It ensures that a company that does not trade in investments would not enjoy the same tax treatment of expenses applicable to a company carrying on the trade of investment dealing. Accordingly, section 10E is not applicable to a company carrying on a trade of dealing in investments.

### 4 Application of Section 10E

- 4.1 Section 10E is effective from the YA 1996. It applies to the following entities:

Entity	Effective Date
A company	13 Oct 1995
The trustee of a property trust	10 Dec 2002
A partner of an LLP <sup>2</sup>	11 Apr 2005
A partner of an LP <sup>2</sup>	4 May 2009

- 4.2 Whether an entity is carrying on the business of the making of investments is a question of fact. An entity claiming to be carrying on such a business must satisfy the Comptroller of this fact based on its activities. Once an entity has satisfied this fact, it may then apply the provisions of section 10E to determine its income derived from its business of making investments from that YA onwards. The income so determined is chargeable to tax under section 10(1)(a) of the ITA.

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<sup>2</sup> Following the enactment of the LLP Act and LP Act on 11 Apr 2005 and 4 May 2009 respectively, section 10E is also applicable to partners of LLP and LPs (section 36A(3) and section 36C(2) of the ITA).

- 4.3 Investments include securities and immovable properties. Business of making investment includes a business of letting immovable properties and a business of letting service apartments.
- 4.4 Under section 10E, the following rules shall apply when determining the income of the entity derived from its business of making investments:
- a. Any outgoings or expenses incurred in respect of investments which do not produce any income are not deductible;
  - b. Any outgoings or expenses incurred in respect of investments which produce income are only deductible against the income derived from such investments. The balance of any outgoings and expenses which cannot be set off in that year shall be disregarded;
  - c. The capital allowances under sections 19, 19A, 20 and 21 are only deductible against the income derived from investments which produce income. The balance of any allowances which cannot be set off in that year shall be disregarded; and
  - d. The IBA under sections 16, 17 and 18 of the ITA are only deductible against the income derived from investments which produce income. But any IBA which cannot be fully utilised by the entity in a YA is not disregarded. If there is other income (e.g. passive interest income) within the same YA, it can be offset against that income and any balance can be carried forward to the next YA subject to the relevant same business test<sup>3</sup> and shareholding test<sup>4</sup> (if the entity is a company). Instead of being carried forward, the current year balance of IBA can also be eligible for group relief with effect from YA 2007.

## **5 Administrative Procedure**

- 5.1 Prior to YA 2005, section 10E would apply to any entity in the business of the making of investments, regardless of whether the entity is the owner of the investment(s).
- 5.2 From YA 2005, the government has decided to grant an administrative concession to exclude non-owners of immovable properties that carry on the business of letting immovable properties from the provisions of section 10E. Non-owners of immovable properties include lessees of properties, main tenants of food courts that sublet stalls to operators etc.

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<sup>3</sup> Provided under section 23(1) of the ITA.

<sup>4</sup> Provided under section 23(4) and section 23(7) of the ITA.

- 5.3 This administrative concession shall not apply if the arrangements by such non-owners with the owners of the immovable properties are not on arm's length basis<sup>5</sup> so as to obtain a tax advantage that is not intended by this concession.

## **6 Contact Information**

- 6.1 If you have any enquiries or need clarification on this Guide, please call 1800-3568622.

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<sup>5</sup> Whether an arrangement is on an arm's length basis is a question of fact.

## 7 Updates and Amendments

	<b>Date of amendment</b>	<b>Amendments made</b>
1	6 Sep 2011	IRAS had issued two administrative concessions to alleviate the transitional difficulties for YAs 1996 and 1997 from a strict application of the S10E. This e-tax guide does not cover them as they are no longer relevant.
2	11 Apr 2012	Paragraph 4.4(d) is revised to make it clear that excess IBA can be offset against other income. It is also eligible for group relief (from YA 2007).