

# **IRAS e-Tax Guide**

## **GST: Guidelines on Determining the Belonging Status of Supplier and Customer**



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## **GST: Guidelines on Determining the Belonging Status of Supplier and Customer**

### **1 Aim**

- 1.1 The belonging status of a person affects the GST treatment of the services supplied or received by him. Specifically, it affects whether a supply of service is considered as made in Singapore and if so, whether the supply can qualify for zero-rating.
- 1.2 This e-Tax guide aims to help businesses who make supplies of services to or in Singapore determine:
  - (a) whether they are considered as belonging in or outside Singapore; and
  - (b) whether their customers belong in or outside Singapore.
- 1.3 This e-tax guide is only relevant for GST purposes and must not be relied on for any other tax purpose. The analysis may be different for different tax purposes, for instance, the Comptroller of Income Tax may approach a matter and take a position that is completely different from what is stated in this e-tax guide. In particular, this e-tax guide is not relevant, and must not be relied on as a guide, for the interpretation or application of any tax treaty.

### **2 At a glance**

- 2.1 The place where a person belongs depends on where the person has his business establishment or fixed establishment, or if he has no such establishment, where his usual place of residence is.
- 2.2 If the person has such an establishment only in Singapore, he will be treated as belonging in Singapore. If the person has such establishments both in Singapore and outside Singapore, as a supplier of services, the person would be treated as belonging in Singapore if the establishment in Singapore is most directly concerned with the supply. If the person is a recipient of services, he will be treated as belonging in Singapore, if his establishment in Singapore is the establishment at which the services are most directly used or to be used.

### **3 Glossary**

#### **3.1 BE**

BE denotes business establishment.

#### **3.2 FE**

FE denotes fixed establishment.

#### **3.3 Person**

Person refers to an individual or any business entity, whether incorporated (e.g. limited company) or unincorporated (e.g. partnerships and associations). For the purpose of this e-tax guide, any supplier and/or customer would qualify as person.

#### **3.4 Supplier**

For the purpose of this e-tax guide, a supplier means a person who makes a supply of service.

#### **3.5 Customer**

For the purpose of this e-tax guide, a customer refers to both the person with whom the contract for services is made and the person who directly benefits from the services supplied. The person with whom the contract is made can be the same or different person as the one who directly benefits from the services.

## 4 Background

### 4.1 For services:

- a) the place where a supplier belongs will affect whether a supply of services is within the charging scope; and
- b) the place where a customer belongs will affect whether a supply of services can be zero-rated.

#### Whether a supply of services is within the charging scope

### 4.2 GST is chargeable on a taxable supply of services ***made in Singapore*** by a GST registered supplier. Your supply of services is considered as made in Singapore if you belong in Singapore:

- You belong in Singapore if you only have BE or FE in Singapore. Conversely, you belong outside Singapore if you only have BE or FE outside Singapore.
- If you have BE or FE both in and outside Singapore, you belong in Singapore if the BE or FE in Singapore is most directly concerned with the making of your supply of services.
- If you do not have BE or FE in any country, your usual place of residence will determine where you belong. The usual place of residence of a body corporate is the place of incorporation or place of its legal constitution.

### 4.3 The rules above are summarized in the flowchart found in Appendix 1 of this e-tax guide.

### 4.4 If you are not already GST-registered, but the services you supply falls within the charging scope as explained in paragraph 4.2, you may become liable for GST registration if the value of your taxable supplies exceeds the registration threshold. Please refer to our e-Tax guide, GST: Do I need to register?, for the rules on when to register for GST.

### 4.5 This e-Tax guide sets out the general rules for determining where a supplier or a recipient of services belong. For services comprising the provision of fund management services, the rules in this e-tax guide would apply together with the rules in our other e-tax guide, GST: Guide for the Fund Management Industry, in determining the belonging status of the client. For the avoidance of doubt, the rules set out in the latter e-tax guide that are specific to the fund management industry would not apply to other supplies of services.

#### Whether a supply of services can be zero-rated

### 4.6 You may zero-rate your supply of services (i.e. charge GST at 0%) to your customer if it falls within the description of international services

under section 21(3) of the GST Act. Some of the zero-rating provisions under section 21(3) require you to determine whether your services are supplied to and directly benefitting customers belonging outside Singapore.

4.7 Your customer will be treated as belonging in Singapore if:

- he only has a BE or FE in Singapore. Conversely, he belongs outside Singapore if he only has a BE/FE outside Singapore.
- he has a BE or FE both in and outside Singapore and your services are most directly used or to be used by his establishment in Singapore.
- he does not have a BE or FE in any country but his usual place of residence is in Singapore.

4.8 The rules above are summarized in the flowcharts found in Appendix 2 of this e-tax guide.

4.9 For services comprising the provision of digitised goods, please refer to our e-tax guide, “GST: Guide for E-Commerce”, for the administrative rules to determine where your customer belongs.

## **5 Supplier’s business establishment and fixed establishment**

5.1 Both BE and FE require the presence of an establishment – that is, a physical place with some degree of permanence at which the supplier can conduct his business. Examples of physical place would include an office (including a place of residence used as a home office), a retail store, a shophouse, a factory, a warehouse or a workshop.

5.2 The establishment need not be perpetual, nor must it be owned or leased by the supplier. Hence, if the premises of the supplier’s customer is made available to the supplier during the period in which the supplies are made, the customer’s premises may be treated as the supplier’s establishment.

5.3 If the facts show that there is no establishment, then there would not be any BE or FE. However, the presence of an establishment does not necessarily give rise to a BE or FE. For an establishment to be a BE or FE, it must have the additional characteristics elaborated in the following paragraphs 5.4 and 5.5.

### **5.4 Whether the supplier’s establishment qualifies as a BE**

5.4.1 You will be treated as having a BE in a country if:

- (a) your main seat of economic activity is in that country;

- (b) you carry on your business through a branch in that country; or
- (c) you carry on your business through an agency in that country.

#### Main seat of economic activity

- 5.4.2 The main seat of economic activity refers to the place where the essential decisions concerning the general management of the company are made and where the functions of its central administration are carried out. It is usually your head office, headquarters or principal place of business.
- 5.4.3 There can only be one main seat of economic activity at any one time. To determine where your main seat of economic activity is, you have to take into account various factors, such as
- (a) where essential decisions concerning the general management of the business are taken;
  - (b) where the meetings of your board of directors or equivalent body are usually held;
  - (c) where your chief executive officer and other senior executives usually meet or carry on their activities; and
  - (d) where registered address of the business is located.
- 5.4.4 In the event that the consideration of the above factors does not give a clear indication of where your main seat of economic activity is, the place where essential decisions concerning the general management of the business are taken would take precedence over other factors.

#### Example 1

Company F is an investment holding company, incorporated in Bermuda. It does not have any employees or administrative office in Bermuda. Its directors conduct the board meetings at a fixed place, on a permanent basis, in Singapore. The making of investment and divestment decisions as well as other executive decisions concerning the general management of Company F rest entirely on the board.

As the directors of Company F conduct the board meetings in Singapore where all essential decisions are made, Company F will be regarded as having a business establishment in Singapore.

#### Agency

- 5.4.5 An agency relationship is established by the consent of the principal and the agent. An agency may be created by a written agreement or implied by the words and conduct of the principal and agent.



5.4.6 For GST purposes, an agency is a business that is engaged by its principal to perform services for his customers on his behalf. However, the Comptroller recognises that taking this broad interpretation may give rise to the situation of many overseas persons merely engaging a service provider in Singapore to become liable for GST registration. Hence, the Comptroller will regard a service provider as an agency through which the overseas person carry on his business only if the overseas person does not have his own human and technical resources to carry out his business activities and he uses the services of that service provider wholly for that purpose<sup>1</sup>.

5.4.7 In all other instances, the Comptroller will treat a service provider as a BE of the overseas person only if the service provider is a dependent agent/agency through whom a person (i.e. the principal) carries on his business.

#### Dependent agent

5.4.8 To establish whether an agency is a dependent agent, the Comptroller will examine the economic reality, function and substance of the arrangement rather than mere labelling or legal form of the arrangement. As an administrative guideline, the Comptroller has set out the following tests to assist you in determining whether an agency engaged by you is your dependent agent:

#### Test 1 – Do you exercise comprehensive control over the agency?

- a) If you exercise comprehensive control over the agency when it is carrying out activities for you, the agency will be considered as your dependent agent. Conversely, if the agency is not subject to detailed instructions from you in conducting his work or you rely on the special skill and knowledge of the agency, the agency is unlikely to be a dependent agent.

#### Where an agency is an independent agent:

- An independent agency will typically be responsible to the supplier for the results of his work but not subject to comprehensive control with respect of the manner in which that work is carried out. He will not be subject to detailed instructions from the principal as to the conduct of the work.
- The fact that the supplier is relying on the special skill and knowledge of the agency is an indication of independence.
- Independent status is more likely if the agent acts for a number of suppliers in the ordinary course of his business.

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<sup>1</sup> An example would be a fund that wholly relies on a Singapore-based fund manager to carry on its business as discussed in the e-Tax, GST: Guide for the Fund Management Industry

Where an agency is a dependent agent:

- Conversely, an agency may be regarded as a dependent agent if:
  - he has to seek prior approval from you for the appointment of management staff or external contractors, conclusion of major contracts, or engagements with third parties to perform similar work;
  - he is precluded from acting for other principals;
  - he has no discretion in setting prices;
  - he has to follow the standard operating procedures, adopt the processes and systems, or comply with the policies as set out by you; or
  - he performs the business activities wholly or almost wholly on your behalf over the lifespan of his business or over a long period of time.

The presence or absence of one or more of the indicators may not affect the dependence of the agency. Each case must be considered in the light of the full facts of the arrangement based on the nature of the business activities.

Indicators not relevant in determining dependence

The following indicators are NOT relevant on its own right in determining whether the agency is subject to detailed instructions or to comprehensive control:

- The control which a parent company (i.e. the supplier) exercises over its subsidiary (i.e. the agency) in its capacity as shareholder is not relevant in a consideration of dependence or otherwise of the subsidiary in its capacity as an agency for the parent.
- Limitations on the scale of business which may be conducted by the agent clearly affect the scope of the agent's authority. However, such limitations are not relevant to dependency which is determined by consideration of the extent to which the agent exercises freedom in the conduct of business on behalf of the principal within the scope of the authority conferred by the agreement.
- The provision of substantial information to the supplier by an agency in connection with the business conducted under the agency agreement is not in itself a sufficient criterion for determining dependency, unless the information is provided in the course of seeking approval from the supplier for the manner

in which the business is to be conducted. The provision of information which is simply intended to ensure the smooth running of the agreement and continued good relations with the principal is not a sign of dependence.

Example 2

Company A is a law firm incorporated in England. It has subsidiaries in various countries including Singapore. Company A is engaged by Company B in England to provide legal advice on Singapore income tax matters in view of a pending law suit. Company A subcontracts the services via an agreement to its Singapore subsidiary, Company C. This is because Company A requires the expertise of the lawyers from Company C who are specialised in Singapore income tax law. Company C will provide the legal services to Company B based on its own expertise and without having to seek approval from Company A on the legal advice to be given. In this case, the Comptroller would not treat Company C as being subject to detailed instructions or to comprehensive control by Company A.

Example 3

Company Y, a training company incorporated in US, decides to expand its business into Singapore. It sets up a Singapore subsidiary, Company Z, to provide training services on its behalf to customers in Singapore. Under the agreement, Company Z is to provide training to Company Y's customers based strictly on the content and method prescribed by Company Y. All the trainers of Company Z have to be trained and certified by Company Y before they could conduct the training. Company Z is not allowed to conduct any other training courses other than that certified by Company Y. In this case, the Comptroller would treat Company Z as being subject to detailed instructions or comprehensive control by Company Y.

Example 4

Company A, which provides pilot training services, has its head office in the United States. It enters into an agreement with its related company in Singapore, Company B. Under the agreement, Company B is to provide pilot training services to Company A's customers. While Company B is to follow the training syllabus and content provided by Company A strictly, Company B has the flexibility to customise the training courses and methods, such as deciding on relevant flight scenarios to simulate (e.g. based on the airports in different countries) using the flight simulators. Company B also has the authority to decide whether to pass or fail Company A's customers. In this case, the Comptroller would not treat Company B as being subject to detailed instructions or to comprehensive control by Company A.

Test 2: Does the agency bear any entrepreneurial risk?

- b) Where the agency does not bear any entrepreneurial risk and instead all such risks are borne by you, the agency will be regarded

as your dependent agent. The following are indicators of a dependent agent:

- he is reliant on you for its capital funding and viability.
- he bears no financial or economic risks under contracts that he concludes with his customers.

Example 5

Company A is a logistics company in China. It enters into an agreement with its related company in Singapore, Company B, to provide logistics services to its Singapore customers. Prior to the agreement, Company B provides logistics services to various other customers and earns around \$4 mil per year from these contracts. The projected income from the agreement with Company A is around \$1 mil (i.e. a quarter of its current annual income). Company B has bought all its assets (e.g. vehicles to provide the logistics services) using its own funds and also hires all its employees. These existing assets and employees would be used to provide the logistics services to Company A. In this case, Company B would be regarded as bearing entrepreneurial risk.

Example 6

Company X is a research and development company in Germany. It has set up a new company in Singapore, Company Y, which would serve as its exclusive agent to provide research and development services to its customers in Singapore. Company Y only serves the customers of Company X. Company Y relies completely on Company X for its financing, as its income comprises only a percentage cut of the fees charged to customers of Company X.. Moreover, Company Y does not bear any economic risk arising from the contracts with the customers of Company X. In this case, Company Y would not be regarded as bearing any entrepreneurial risk.

5.4.9 The two tests above are the main ones that the Comptroller would rely on to establish the presence of a dependent agency. An agency would be regarded as a dependent agent if you exercise comprehensive control over the agency and/or if the agency does not bear any entrepreneurial risk. Furthermore, a dependent agent would be regarded as your BE only if you carry on a business through him.

Carrying on business through dependent agent

5.4.10 You will be treated as carrying on your business through a dependent agent in a country if:

- (a) you appoint the agent in that country to carry out your main business or one of your main businesses (as opposed to an activity or a business function); and

- (b) the agent is required to make supplies to your customers on your behalf. If the agent only provides services to you and not to your customers, you will not be considered as carrying on a business through the agent.

Example 7

Using the same scenario as in example 6, Company X would be regarded as carrying on a business through Company Y in Singapore, as Company Y provides research and development services on its behalf to the customers in Singapore.

Example 8

Company X is a logistics company in Malaysia. It appoints Company Y in Singapore as its marketing agent to promote its logistics services in Singapore. In this case, Company X would not be treated as carrying on his business through Company Y in Singapore.

5.5 Whether the supplier's establishment qualifies as an FE

- 5.5.1 An FE is an establishment (other than BE) that has both the human and technical resources necessary to provide the particular services on a permanent basis.

Human and technical resources

- 5.5.2 Human resources refer to the presence of staff<sup>2</sup> to provide (or receive<sup>3</sup>) the particular service. Technical resources would refer to physical goods (e.g. equipment, computer, tablet, mobile phone, office premises) necessary to support the human resources in the provision (or receipt<sup>4</sup>) of that particular service. Generally, it is presumed that the presence of human resources would be accompanied by the necessary technical resources in order to provide the particular service. Hence, technical resources are presumed to be present where human resources are present.
- 5.5.3 Whether an establishment has the human and technical resources to provide (or receive) the particular service would depend on the nature of that service. For example, in a case of a supply of ship, on the one hand, the presence of employees in Singapore to direct, manage and supervise the construction of a ship at a shipyard for delivery to a Singapore customer would give rise to an FE. On the other hand, the

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<sup>2</sup> For the purpose of determining whether there is an FE, human resources refer to the employees of the company and do not include employees of a third party such as the company's subcontractor or related company.

<sup>3</sup> The presence of human resources to receive services would be applicable when determining the presence of your customer's FE – see paragraph 7.5(b) below.

<sup>4</sup> The presence of technical resources to support the human resources in the receipt of services would be applicable when determining the presence of your customer's FE – see paragraph 7.5(b) below.

mere presence of employees in Singapore to attend the ship launching ceremony in itself would not constitute an FE.

- 5.5.4 Fixed assets without human resources cannot constitute an FE. For example, the mere presence of a computer server or jackpot machine in Singapore will not give rise to an FE in Singapore.

Continuity and permanency

- 5.5.5 For an establishment to constitute an FE, the human and technical resources must be present for a certain degree of continuity and permanency. Generally, the Comptroller would regard that there is continuity and permanency if:

- (a) the human and technical resources are available in Singapore for an aggregate period of more than 183 days in any 12-month period (i.e. “period threshold”); or
- (b) the human and technical resources are present in Singapore on a recurring basis.

- 5.5.6 The guidelines for ascertaining the period threshold are:

- The counting of days is done on a moving 12-month basis.
- The number of days of physical presence of employees is to be counted towards the period test, regardless of whether it is a working day or not.
- The collective physical presence of the employees should be aggregated.
- Where the physical presence of employees overlaps on any day, it should be counted only as a single day.
- The collective physical presence of the employees should be aggregated in respect of each particular services (i.e. by project, contract or performance).
- Where the employees are physically present at different locations, their collective physical presence should be aggregated if it is in respect of the same particular services.
- Where the period threshold is breached for any 12-month period over the duration of supply of services, the establishment would be regarded as constituting an FE in Singapore for the entire supply of services.
- The period threshold is to be determined once at the beginning of the supply of services for the entire duration of the supply. If it is assessed that the period threshold would be breached at the

beginning of the supply of services, the establishment would be regarded as constituting an FE in Singapore, notwithstanding that the actual physical presence of the employees turns out to be less than 183 days in a 12-month period. Conversely, if it is assessed that the period threshold would not be breached at the beginning of the supply of services but the actual physical presence of the employees turns out to be more than 183 days in a 12-month period, the establishment would be regarded as an FE unless the Comptroller is satisfied that it could not be reasonably anticipated that the physical presence of the employees would exceed 183 days at the time of supply. To ascertain if there is “reasonable anticipation”, the Comptroller would consider the basis of the original projection of the employee presence in Singapore, whether the basis is supported by documentary proof (e.g. contract, project work plan) and the reasons for the deviation from the original projection. If the Comptroller is not satisfied that the original projection was made within reasonable anticipation, the establishment would be considered as an FE from the time the period threshold is breached and the consequential GST implications (e.g. liability for GST registration) would follow from that point onwards.

- Only the number of days from the commencement of the services to the cessation of the services would be counted. Hence, if an employee is physically present in Singapore before the commencement or after the cessation of his work in Singapore (e.g. for a holiday in Singapore), those days would not be counted.

*Example 9*

Company C, incorporated in Singapore, engaged Company D, an overseas company, to provide engineering services at its plants in Singapore. Company D assigned employee A to render the engineering services at plants X and Y in Singapore. Employee A worked in plants X and Y during the periods 1/10/2014 to 31/12/2014 (92 days) and 1/4/2015 to 30/6/2015 (91 days) respectively. Another employee B was assigned to perform engineering services at plant Z from 1/1/2015 to 31/5/2015 (151 days).

Since the employees of Company D were in Singapore to perform engineering services for the same contract, their collective physical presence at plants X, Y and Z should be aggregated. Where the period in which employee A was present in Singapore overlapped with that of employee B (i.e. 1/4/2015 to 31/5/2015), the period should be counted only once. Hence, the total aggregate period the employees of Company D are in Singapore is 273 days (i.e. 1/10/2014 to 30/6/2015) for the 12-month period from 1/10/2014 to 30/9/2015. This exceeds the period threshold of 183 days. Accordingly, Company D would be regarded as having an FE in Singapore.

## 6 Determining where the supplier belongs

- 6.1 If you have a BE or FE only in Singapore and nowhere else, obviously, you will be treated as belonging in Singapore. Conversely, if your BE or FE are all located outside Singapore, then you would be treated as belonging outside Singapore and your supplies of services to Singapore will be outside the scope of GST<sup>5</sup>.
- 6.2 If you have a BE and/or FE both in Singapore and outside Singapore, you would have to determine which of your establishments is most directly concerned with the making of your supply of service. If your establishment which is most directly concerned with the particular supply is in Singapore, you will be treated as belonging in Singapore.

### Determining the BE or FE most directly concerned with supply

- 6.3 The BE or FE most directly concerned with a supply is the establishment that actually provides or performs the services. Hence, if your BE or FE in Singapore is the one solely performing/providing the services to your customer, you will be treated as belonging in Singapore for the supply of services.
- 6.4 If both your BE or FE in Singapore and outside Singapore are jointly involved in performing the service for your customer, you need to examine the tasks and functions carried out by each establishment in respect of the supply and evaluate the significance of the role of each establishment towards making the supply in the light of the core element or subject matter of the supply.

#### Example 10

Company A intends to organise an international art exhibition in Malaysia. Company A's head office is based in Singapore. The Singapore head office does all the planning and co-ordination work, which include:

- budgeting, forecasting of demand, selection of potential exhibitors to target;
- engagement of all necessary supplier (e.g. facility provider for the provision of exhibition halls, advertising company for advertising services etc) and co-ordination with these suppliers on the timing of delivery of goods and services; and
- managing the operations of the exhibition on the event day itself.

Company A's branch office in Malaysia would handle all related administrative work (e.g. verification of exhibitors and issuance of security passes) and provide the necessary manpower to assist with the operations of the exhibition on the event day itself. In this case, the activities carried out by the Singapore head office are more significant and would have made greater contribution to the provision of exhibition services.

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<sup>5</sup> Singapore currently does not impose GST on "imported" services.



6.5 In the event that you are unable to determine the establishment that plays a more significant role towards making the supply, you may determine the significance of the contribution of each of your BE or FE by using the following proxies. In general, the BE or FE in Singapore is most directly concerned with the supply of service if it performs more than 50% of that particular service based on the proxies below:

- Revenue contribution in relation to the particular supply (i.e. how much of the total revenue generated from that particular supply is attributable to the activities performed by the various establishments);
- Cost(s) incurred to perform that particular supply by Singapore BE/FE and other overseas BE/FE (e.g. manpower costing, equipment costing);
- Time spent in performing that particular supply.

## **7 The customer's business establishment and fixed establishment**

7.1 You may zero-rate your supply of services (i.e. charge GST at 0%) to your customer if it falls within the description of international services under Section 21(3) of the GST Act. Some of the zero-rating provisions under section 21(3)<sup>6</sup> require you to determine the following:

- a) Whether your services are supplied under a contract with a person (to be referred to as Contractual Person) who belongs outside Singapore; and
- b) Whether your services would directly benefit a person (to be referred to as Direct Beneficiary) who belongs in a country other than Singapore.

7.2 The Contractual Person and the Direct Beneficiary may be the same person or different persons<sup>7</sup>. For the purpose of this guide, both the Contractual Person and the Direct Beneficiary would be referred to as your customer.

7.3 Given the rules above, you would have to first establish the identities of your Contractual Person and Direct Beneficiaries. The Contractual Person would be the person who has entered into a contract with you to procure your services. The Direct Beneficiary would be the person who has directly benefitted from your services. For information on identifying the Direct Beneficiary, please refer to the e-Tax guide, GST: Clarification on "Directly in Connection With" and "Directly Benefit".

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<sup>6</sup> Sections 21(3)(j), (k), (s) or (y) and section 21C of the GST Act

<sup>7</sup> Section 21(4A) of the GST Act

- 7.4 Once you have established the identity of each customer, you would have to establish where are the BE(s) and/or FE(s) of each customer. As explained in paragraph 4.5 above, the location of your customer's BE and FE would affect where your customer belongs.

#### Establishment of customer

- 7.5 In general, the guidelines to determine the location of your customer's BE and FE are similar to those used to determine where you (i.e. the supplier) belong – see paragraph 5 above:
- a) Paragraph 5.4 will help you determine whether your customer's establishment qualifies as a BE; and
  - b) Paragraph 5.5 above will help you determine whether your customer's establishment qualifies as an FE – namely an establishment (other than BE) that has both the human and technical resources necessary for the receipt of the particular service on a permanent basis. The human and technical resources necessary to provide services may be different from those necessary to receive services, as explained in example 11 below.

#### Example 11

Company A is a business consultancy firm incorporated in Singapore. It has offices both in Singapore and Malaysia. The Singapore office is currently dormant and has only one employee stationed to handle various regulatory and administrative matters (including matters relating to tax). The consultancy services are provided by Company A's office in Malaysia, where all its other employees and directors are stationed. Company A signs a contract with a local supplier, Partnership B, to procure advisory services on Singapore taxation matters for its Singapore office. While Company A's Singapore office does not have the human and technical resources to provide its business consultancy services, it would have the human and technical resources to receive the advisory services on taxation matters provided by Partnership B.

#### Example 12

An insurance company in Malaysia, Company X, has engaged Company Y in Singapore to provide sales training courses to its insurance agents in Singapore. Company Y is aware during the course registration process that these insurance agents are working from an office in Singapore. Company Y is also instructed to send all course related documents to that Singapore office. In this case, Company Y should treat Company X as having a BE or FE in Singapore.

#### Example 13

Company A is a stock broker in Singapore. It signs a contract with Company B in Japan to provide brokerage services to Company C in Malaysia (i.e. to mean that Company C is the Direct Beneficiary). Company A is notified that trading instructions may be given directly by Company C's office in Singapore. Also, Company C's website shows that Company C has an office in Singapore. In this case, Company A should treat Company C as having a BE or FE in Singapore.

7.6 As a supplier, you should always take reasonable steps to determine whether your customer belongs in Singapore. For ease of compliance, you may adopt any of the following administrative guidelines in determining the belonging status of your customer:

- a) Verify directly with your customer;
- b) Obtain a written declaration from your customer that it does not have a branch, agency, office, factory, warehouse or personnel in Singapore;
- c) Check whether your customer is incorporated or registered in Singapore against ACRA's one-stop business service portal;
- d) Check whether your customer has indicated a Singapore address in any of the following:
  - Customer's letterhead
  - Customer's website (including business webpages maintained on other online social media)
  - Customer's corporate email standard template
  - Websites on directories of business (e.g. Yellow pages)
  - Contract or other documents that you have obtained through contact with your customer (e.g. purchase order)

However, the onus remains on you to ensure that you have adopted the correct GST treatment. Where there is reasonable basis to believe that your customer may be making an incorrect declaration, the onus is on you to carry out further verification of the belonging status of your customer. In the event of doubt, you should standard-rate the supplies unless your customer can prove that it belongs outside Singapore.

7.7 The administrative guidelines above are merely to ease your compliance costs. Should you have the information to apply the guidelines mentioned in paragraph 7.5 above, you may choose not to apply the administrative guidelines. If your customer objects to your decision to apply the administrative guidelines, you should inform him to provide you with the necessary information and the related documentary evidences, so as to allow you to apply the guidelines in paragraph 7.5 above.

## **8 Determining where the customer belongs**

8.1 If your customer has BE and/or FE both in Singapore and outside Singapore, you would have to determine which of your customer's establishment has most directly used your supply of service:

- Your customer belongs in Singapore for that particular supply of services if his BE or FE in Singapore is the establishment that solely benefits from the performance of your particular services;
- Your customer belongs outside Singapore for that particular supply of services if his BE or FE outside Singapore is the establishment that solely benefits from the performance of your particular services;
- If your customer's BE or FE in Singapore and outside Singapore have jointly benefited from the performance of your services, both establishments will be regarded as Direct Beneficiaries for the purpose of the zero-rating provisions under section 21(3) of the GST Act.

8.2 To determine whether an establishment of your customer has used the particular supply that you provide, you would have to examine the flow of the benefits based on the nature of the particular services that you provide. The starting point would generally be the contract or other documents.

8.3 If the contract clearly states that your services would be provided for the benefit of particular establishment(s), then that establishment(s) would be regarded as the establishment that has most directly used the particular services that you provide. If this is not stated clearly in the contract, you may then refer to invoices, correspondences or other documents with your customer to determine whether your services would be provided for the benefit of particular establishment(s).

8.4 If the contract and other documents do not state or do not clearly state the establishment(s) that would benefit from your services, you may rely on the following factors that would indicate that the flow of benefits of your particular services:

- Obvious use of your services at a particular establishment. For example, if the lease of your equipment is for use at a Singapore establishment, the Singapore establishment directly benefits from your service
- Your services are relating to a business being conducted by a particular establishment. For example, the provision of your advisory services is in relation to a transaction carried out by a Singapore establishment, the Singapore establishment is likely to be a direct beneficiary of your services;

- Your services involve the delivery of any product (e.g. research findings) to a particular establishment

## **9 Usual place of residence**

- 9.1 The usual place of residence of a person (i.e. both supplier and customer) is used to determine where that person belongs if he does not have any BE or FE.
- 9.2 The usual place of residence of a corporate body is the place of incorporation or place of its legal constitution.
- 9.3 If the person is an individual with no BE or FE, he shall be treated as belonging in Singapore if his usual place of residence is in Singapore during the period of service.
- 9.4 An individual should just have one usual place of residence at any point in time. The "usual place of residence" of an individual should have the following attributes:
  - The individual stays in that country voluntarily and for a settled purpose, such as to pursue a course of study or due to employment; and
  - The individual's stay in that country has some degree of continuity, apart from temporary or occasional absence, such that it forms part of the regular and habitual pattern of his life.
- 9.5 The Comptroller of GST may regard the residential address of an individual as his "usual place of residence". Hence, if that individual has a Singapore residential address, he shall be regarded as belonging in Singapore for GST purposes.
- 9.6 Where an individual stays overseas to study or work and has more than one residential address, with effect from 1 Apr 2010, the Comptroller of GST may regard the individual as belonging overseas if all of the following conditions are satisfied:
  - He is absent from Singapore for a continuous period of at least one year. His temporary return to Singapore for vacation or other reasonable purposes will not cause him to be treated as belonging in Singapore.
  - He stays at a fixed place in the overseas country.
  - Where he is working in the overseas country, his overseas assignment must not be incidental to his business or employment in Singapore. For example, an individual sent to work overseas by his local employer will not satisfy this condition and therefore will be treated as belonging in Singapore.

## **10 Frequently asked questions**

**Q1** If an overseas company is treated as a Singapore resident company for income tax purposes, would it be treated as belonging in Singapore for GST purposes?

**A1** The concept of tax residency for income tax purposes is different from the concept of belonging for GST purposes. An overseas company who is tax resident in Singapore may not necessarily belong in Singapore for GST purposes. The place where the overseas company belongs depends on where it has its business establishment or fixed establishment, or if it has no such establishment, where its usual place of residence is (i.e. where the company is incorporated or otherwise legally constituted). If the overseas company has such establishment only in Singapore, it will be treated as belonging in Singapore. If it has such establishments both in Singapore and outside Singapore, as a supplier of services, it will be treated as belonging in Singapore if the establishment in Singapore is most directly concerned with the supply. As a recipient of services, it will be regarded as belonging in Singapore if the establishment in Singapore most directly used the service.

**Q2** If an overseas company is registered as a group for GST purposes and the representative member of the group registration is a Singapore company, will that representative member be considered as giving rise to a business establishment or fixed establishment of the overseas company in Singapore?

**A2** No, the representative member will not give rise to a business establishment or fixed establishment of the overseas company by virtue of the GST group registration.

**Q3** An overseas company is GST-registered in Singapore and appointed a local agent under section 33(1) of the GST Act to act on its behalf for all GST matters, will the local agent be regarded as a business establishment or fixed establishment of the overseas company in Singapore?

**A3** No, the local agent will not be regarded as the business establishment or fixed establishment of the overseas company by virtue of acting on behalf of the overseas company for all its GST matters under section 33(1) of the GST Act.

**Q4** An overseas company has a server in Singapore, will the server constitute a fixed establishment of the overseas company in Singapore?

**A4** A fixed establishment is an establishment that has both the human and technical resources necessary to provide the particular services on a permanent basis. Thus, the overseas company that has a server in Singapore will not be regarded as having a fixed establishment in Singapore if it does not have any human resources in Singapore.

- Q5 Would a Singapore registered office constitute an FE in Singapore?
- A5 Not all Singapore registered offices would constitute FEs in Singapore. A registered office would be regarded as an FE in Singapore if it is capable of receiving the services being supplied or supplying the services in question.
- Q6 Whether a cost-plus company would be regarded as a BE of its overseas parent company?
- A6 A cost-plus company, even if it were regarded as a dependent agent of its overseas parent company, would not be regarded as a BE of its overseas parent company unless it carries on the business of the overseas parent company in Singapore (e.g. by making supplies to the overseas parent company's customers in Singapore). If the cost-plus company only provides services to the overseas parent company, it would not be regarded as a BE of the overseas parent company.

## **11 Contact information**

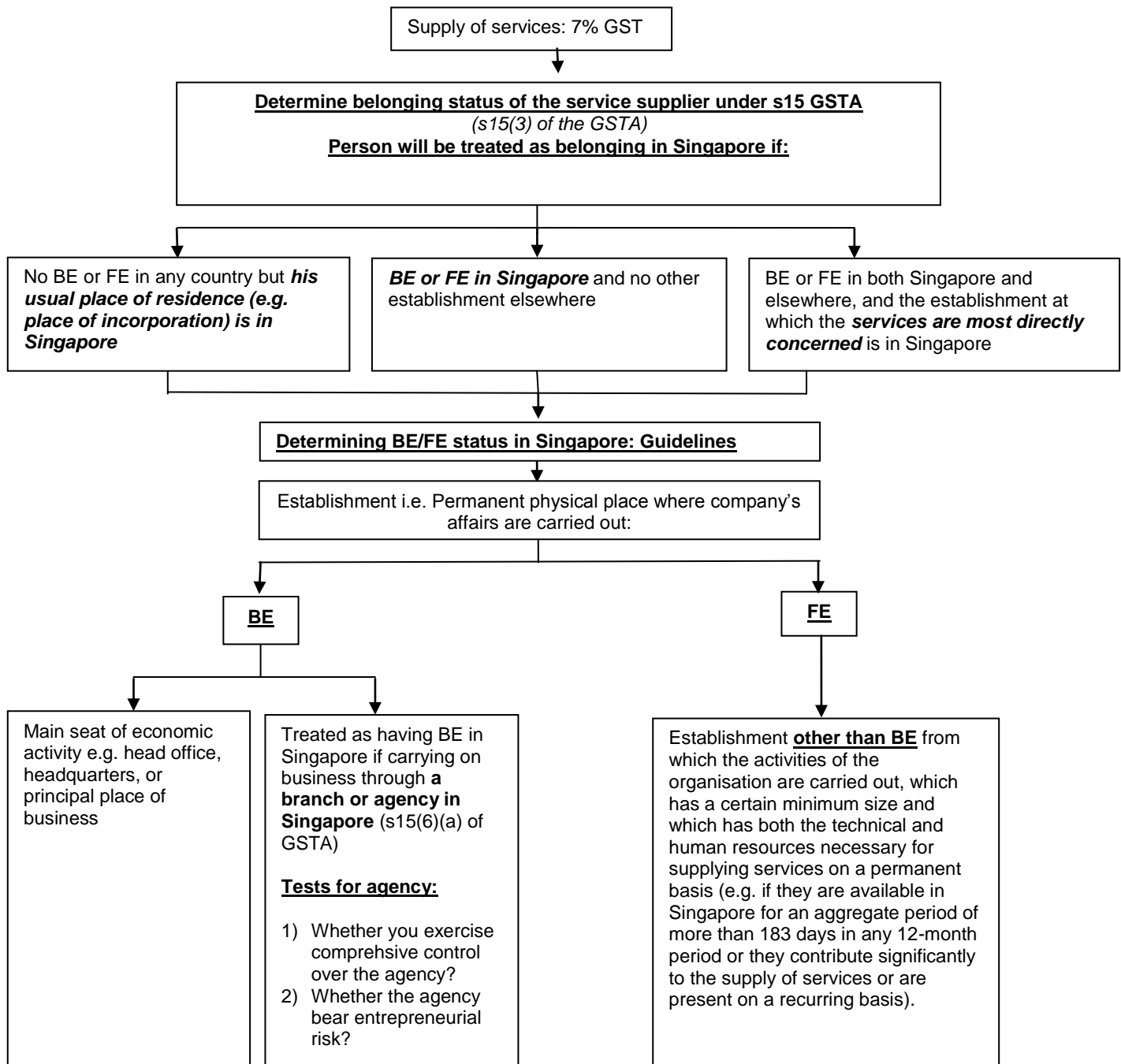
### **11.1 For enquires on this e-Tax Guide, please contact:**

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## Appendix 1

### Determining the Belonging Status of a Service Supplier — Concepts of Business Establishment (BE) and Fixed Establishment (FE)





### Determining the Belonging Status of a Service Recipient—Concepts of Business Establishment (BE) and Fixed Establishment (FE)

