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Carrying on Business In Singapore



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1. Registration Requirements

1.1 Obligation to register: A foreign company without any legal presence in Singapore cannot carry on business unless the foreign company registers such business in Singapore under the Business Registration Act in Singapore or a company under the Companies Act.

1.2 What is Carrying on Business: The term carrying on business is defined in Section 366 of the Companies Act to include “administering, managing or otherwise dealing with property situated in Singapore as an agent, legal personal, representative, or trustee, whether by employees or agents or otherwise”.

1.2.1 The above definition is not exhaustive, and there is no comprehensive set of factors that will conclusively determine whether or not a company is carrying on business.

1.3 What is NOT Carrying on Business: The Companies Act sets out a list of activities, the doing only of which will not cause a foreign company to be regarded as carrying on business in Singapore. These are, if the foreign company:

- (a) *is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute;*
- (b) *holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;*
- (c) *maintains any bank account;*
- (d) *effects any sale through an independent contractor;*
- (e) *solicits or procures any order which becomes a binding contract only if such order is accepted outside in Singapore;*
- (f) *creates evidence of any debt or creates a charge on movable or immovable property;*
- (g) *secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;*
- (h) *conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time;*
- (i) *invests any of its funds or holds any property;*
- (j) *establishes a share transfer or share registration office in Singapore; or*

- (k) *effects any transaction through its related corporation licensed or approved under any written law by the Monetary Authority of Singapore, under an arrangement approved by ACRA.*

2. Corporate Tax Implications

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

2.2 Charging Section: Section 10 of the Income Tax Act ("**SITA**") provides that tax shall be imposed on the income of any person "*accruing in or derived from Singapore or received in Singapore from outside Singapore*" in respect of gains or profits from any trade, business, profession or vocation, employment, dividends, interests or discounts, pension, charge or annuity, rents, royalties, premiums and any other profits arising from property and gains or profits of an income nature not falling within the ambit of any of the above.

(a) Under the "*accruing in or derived from*" basis, income is liable to Singapore tax if it is sourced in Singapore (the "**Accruing In or Derived From Basis**").

(b) Under the "*received in Singapore from outside Singapore*" basis, income having a source outside Singapore is liable to tax in Singapore only if it is received in Singapore, unless specifically exempted therefrom (the "**Received in Singapore Basis**").

2.3 A circular published by the Inland Revenue Authority of Singapore ("**IRAS**"), clarifies that the Received in Singapore Basis will be applied to tax foreign income received in Singapore only if the income belongs to an entity which is located in Singapore; non-resident foreign businesses which are not operating in or from Singapore will only be subject to tax on the Accruing In or Derived From Basis.

2.4 Residence: A company is regarded as resident in Singapore if the control and management of its business is exercised by its directors in Singapore. The place of control and management is generally taken to be the place where the directors meet to decide on the affairs of the company.

2.5 Trading in Singapore: It is a question of fact whether a non-resident person is trading with (another person in) Singapore or trading in Singapore.

2.5.1 Trading: The Comptroller of Income Tax ("**Comptroller**") will look at the "*badges of trade*" to ascertain whether a particular transaction is of a capital or revenue nature. The badges of trade are:

- (a) the subject matter of realization;
- (b) the length of period of ownership;
- (c) the frequency or number of similar transactions by the same person;

- (d) the supplementary work on or in connection with the property realized;
- (e) the circumstances responsible for realization; and
- (f) the motive.

2.5.2 Trading in Singapore: The following are some of the factors that may be considered by the Comptroller in determining whether or not a non-resident person is trading in Singapore:

- (a) whether there is a permanent establishment in Singapore;
- (b) whether the non-resident has employed capital in Singapore in respect of ownership of property (i.e. patents, trade marks or the ownership of trading stock);
- (c) whether the taxpayer carries on business operations within Singapore (i.e. performing acts under a contract);
- (d) the location where contracts are formed;
- (e) the location where the services are performed; and
- (f) the location where the goods pass.

2.5.3 Permanent Establishment: Permanent establishment is defined in section 2(1) of SITA as 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; and*

- (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 enterprise as are controlled by that person.*

2.5.4 If one or more of the factors set out in paragraphs 2.5.2(a) to 2.5.2(f) exists, a trade or business may be regarded as being carried on in Singapore and, if so, any income arising from the same will be subject to Singapore tax.