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Memorandum On The Tax On Income Of A Corporation

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1. Tax on income of a corporation

Singapore tax laws only tax income of a corporation that is derived from a source within Singapore or received in Singapore from outside Singapore. There is no precise definition of "source" in the Singapore Income Tax Act (Cap. 134) ("**the Act**") and consequently, each commercial activity has to be carefully examined to determine the source from which it generated income.

There is no capital gains tax in Singapore and consequently, capital receipts would not be taxable in Singapore. The question as to whether a payment is an income or a capital receipt, is determined based on the facts of each case. What amounts to 'income' is not defined in the Act.

The general principle, however, is that where a receipt is of a recurring nature or arises from the carrying on of a trade or business, it would be chargeable to income tax as being an income receipt. Income is wealth that is transferred and circulated and may consist of a series of separate receipts. Capital receipts on the other hand are generally of a once-and-for-all nature and are considered to be wealth retained.

Accordingly, the income derived by a company would be taxable in Singapore (a) if it accrues in or derives from Singapore ("**local income**"), or (b) if it does not accrue in or derive from Singapore ("**foreign income**"), it is received or deemed received in Singapore.

Income is regarded as received in Singapore from outside Singapore if the income:

- is remitted to, transmitted or brought into, Singapore;
- is applied in or towards the satisfaction of any debt incurred in respect of a trade or business carried on in Singapore; or
- is applied towards the purchase of any movable property which is brought into Singapore.

This means that any foreign income which is remitted to Singapore would be liable to tax in Singapore upon its receipt in Singapore.

As an administrative concession, the Internal Revenue Authority of Singapore ('**IRAS**') has clarified that the above provisions which seek to tax foreign income, would only apply to tax such income belonging to a tax resident individual or an entity located in Singapore. Hence, it would appear that non-resident individuals and foreign businesses which are not operating in or from Singapore can bring their foreign income to Singapore without being taxed.

In Singapore, income is assessed to tax on a preceding year basis. Essentially, this means that income earned by a company in a fiscal year will be taxed in the following tax year, referred to as the year of assessment. For example, income for the fiscal year ended in 2001 will be assessed in the year of assessment of 2002.

2. Tax residence of a company

A company would be deemed to be tax resident in Singapore if the 'control and management' of its business is exercised in Singapore for the current year of assessment.

'Control and management' is not defined in the Act and what constitutes control and management is essentially a question of fact. Thus, a company would be deemed to be tax resident in Singapore if the directors generally manage and control the company from, and regularly hold board meetings in, Singapore.

Conversely, if control and management of the company is carried out by directors who meet and act outside of Singapore, it is likely that the company:

(i) although incorporated in Singapore;

(ii) with its business operations in Singapore;

(iii) with its profits earned out of Singapore; and

(iv) with some of its board meetings in Singapore (though the majority of which are overseas);

will not be tax resident in Singapore if in reality the control and management of all its functions are outside Singapore.

(a) Non-resident company

A company which is not tax resident in Singapore but carries on part of its business operations in Singapore can still be liable to Singapore tax upon its profits.

Thus, for a non-resident company in Singapore, its business profits which are not directly attributable to its business operations carried on outside Singapore, would be deemed to be derived from Singapore, i.e. such profits would be taxable in Singapore.

(b) Resident company

If a company is tax resident in Singapore, its foreign income received in Singapore on or after 1st June 2003 which falls within any of the following categories, would be tax exempt (hereinafter '**general tax exemption**'), namely:

(a) Dividend derived from any territory outside Singapore; or

(b) Profit derived from any trade or business carried on by its branch in any territory outside Singapore; or

(c) Income derived from any professional, consultancy or other services rendered in any territory outside Singapore, provided that the Comptroller of Income Tax is satisfied that the income is derived from outside Singapore. IRAS has taken the view that income derived from such services would be tax exempt but only to the extent of services rendered through a fixed place of operation outside Singapore in the course of a person's trade or business.

The general tax exemption, however, will only be available if the following conditions are satisfied:

(a) Such income is subject to tax of a similar character to income tax under the law of the territory from which the income is received, i.e. only income on which tax is paid or payable in that foreign jurisdiction can be included; and

(b) At the time such income is received in Singapore by the company, the highest corporate tax rate of the foreign jurisdiction from which the income is received, is not less than 15%; and

(c) The Comptroller of Income Tax is satisfied that the tax exemption would be beneficial to the company.

In addition, there are tax exemptions and/or concessions which may be applicable in respect of the income derived by companies in specific industries.

The numerous double tax treaties concluded by Singapore also grant full and/or limited tax exemptions upon certain categories of foreign income, which have been subjected to tax in the foreign jurisdiction.

Please note that where there is a conflict between the provisions in a tax treaty and the provisions in the domestic law, the former will generally prevail. The exception to this general rule is where an internal law is enacted and a provision is specifically made for this law to precede the provisions of the tax treaty.

As for foreign income received in Singapore from a foreign jurisdiction for which no tax treaty has been concluded by Singapore, provisions under the Act may provide for relief from double taxation by way of unilateral tax credits.

(C) Tax rates

Income is taxed on a preceding year basis and the corporate tax rate for Year of Assessment 2008 is 18%. Generally, this rate applies to both resident and non-resident companies in Singapore, subject to any applicable tax exemptions and/or concessions.

(D) Dividend

Dividends paid by a Singapore resident company, apart from dividends paid on preference shares, are tax-exempt in the hands of the shareholders if they constitute '**normal exempt dividends**'. Normal exempt dividends are paid out of any of the following categories of income:

(a) income exempted from tax under specified tax exemptions;

(b) income which is taxed at a concessionary tax rate;

(c) income which is not taxed because of approved deduction or further deduction, of expenses;

(d) foreign income of a resident company which is exempted under the general tax exemption;

(e) foreign income received by a resident company in respect of which a tax credit has been allowed.

With effect from 1 January 2003, Singapore has adopted the "one-tier corporate taxation system" and corporate income will be taxed at the corporate level and this will be a final tax. This means that any dividends, including dividends paid on preference shares, distributed by a resident or non-resident company, will be tax exempt in the hands of its shareholders as tax exempt (1-tier) dividends.

Please note that if a company distributes normal exempt dividends, instead of tax exempt (1-tier) dividends, it must maintain an exempt income account until 31st December 2007.

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