

BDO Tax News

Singapore Taxation of Foreign Asset Disposal

The recently enacted Section 10L of the Singapore Income Tax Act (SITA) imposes tax on foreign-sourced disposal gains received in Singapore. The new section aims to tax such gains derived by relevant entities that are part of a multinational group and lack reasonable economic substance in Singapore. The change is in line with Singapore's commitment to fostering domestic economic substantive activities while mitigating international tax avoidance risks.

With effect from 1 January 2024, Singapore will treat gains from the sale or disposal of foreign assets as income chargeable to tax under Section 10(1)(g) if:

- the gains are received or deemed received in Singapore¹; and
- the gains are derived by an entity without adequate economic substance in Singapore; or
- the gains are from the disposal of foreign intellectual property rights (IPR).

To determine the tax treatment on gains or losses from the sale of **foreign assets**, understanding the following is important:

- ▶ Covered entities
- ▶ Covered income
- ▶ Specific exclusions
- ▶ Economic substance requirements (ESRs) in Singapore
- ▶ Disposal of foreign IPR
- ▶ Ascertainment of gains chargeable to tax, open market price and foreign tax credit

Covered entities

Section 10L only applies to entities² of relevant groups. A group is a relevant group if it has entities not incorporated, registered or established in Singapore; or if any entity of the group has a place of business outside Singapore.

Covered income

Covered income generally refers to the gains from the sale or disposal of any movable or immovable property situated OUTSIDE Singapore. Examples of such assets are:

- ▶ Immovable property situated outside Singapore;
- ▶ Equity/debt securities registered on a foreign exchange;
- ▶ Unlisted shares issued by a foreign-incorporated entity;
- ▶ Loans where the creditor is a resident in foreign jurisdiction;
- ▶ IPR where the owner is a resident in a foreign jurisdiction.

¹ Refer to Section 10(25) of the ITA for the definition of received or deemed received in Singapore

² An entity means (a) any legal person (including a company, limited liability partnership) but not an individual; (b) a general partnership or limited partnership; or (c) a trust

CONTACT US



EVELYN LIM

Executive Director

69902830

evelynlim@bdo.com.sg



WONG SOOK LING

Executive Director

69902831

sookling@bdo.com.sg

BDO TAX ADVISORY PTE LTD

600 North Bridge Road
#23-01 Parkview Square
Singapore 188778
Tel: +65 6828 9118
Fax: +65 6828 9111

www.bdo.com.sg

Specific exclusions (except for foreign IPR)

Section 10L will not apply to the following entities where such gains are derived as part of, or incidental to, the business activities of:

- ▶ Financial institutions³;
- ▶ Entities under certain tax incentive schemes⁴, and the sale or disposal occurs during the incentivised period. Note that entities availing themselves of Singapore fund tax incentive schemes are not specifically excluded from the scope of Section 10L;
- ▶ Entities that meet the ESRs in Singapore in the basis period in which the sale or disposal occurs.

The ESRs test for a pure equity-holding entity (PEHE) and non-pure equity-holding entity (non-PEHE) are tabulated in the table below:

	<i>PEHE</i>	<i>Non-PEHE</i>
Definition	Means an entity - (a) whose primary function is to hold shares or equity interests in other entities; and (b) that has no income other than — (i) dividends or similar payments from the shares or equity interests; (ii) gains on the sale or disposal of the shares or equity interests; or (iii) income incidental to its activities of holding shares or equity interests in other entities.	Means an entity that is not a PEHE
Economic substance requirement	The entity is required to (i) comply with every obligation to submit any regular return, statement or account under the written law under which it is incorporated or registered; (ii) have its operations managed and performed in Singapore (whether by its employees or other persons); and (iii) have adequate human resources and premises in Singapore.	The entity is required to (i) carry on a trade, business or profession in Singapore; (ii) have its operations managed and performed in Singapore (whether by its employees or other persons); and (iii) have reasonable economic substance in Singapore. Factors considered include: (A) number of full time employees of the entity (or other person managing or performing the entity's operations) in Singapore; (B) the qualifications and experience of such employees in Singapore; (C) the amount of business expenditure incurred in and outside Singapore relative to the amount of its income; (D) whether the key business decisions of the entity are made by persons in Singapore.

It is important to note that the above specific exclusions do not apply to the sale or disposal of foreign IPR, which are subject to different rules.

Economic substance requirements

As a general rule, outsourcing services to a service provider is acceptable for the purpose of meeting the ESRs. Conditions under the outsourcing rules are:

- ▶ Economic activities are to be carried out by the outsourced entity in Singapore;
- ▶ The outsourced entity has direct and indirect control over the outsourced activities; and
- ▶ Dedicated resources are set aside to provide services.

³Financial institutions refer to (i) a bank or merchant bank licensed under the Banking Act 1970; (ii) a finance company licensed under the Finance Companies Act 1967; (iii) an insurer licensed or regulated under the Insurance Act 1966; or (iv) a holder of a capital markets services licensed under the Securities and Futures Act 2001

⁴Tax incentive schemes refer to (i) Aircraft Leasing Scheme; (ii) Development and Expansion Incentive; (iii) Finance and Treasury Centre Incentive; (iv) Financial Sector Incentive; (v) Global Trader Programme; (vi) Insurance Business Development Incentive; (vii) Maritime Sector Incentive; (viii) Pioneer Certificate Incentive

Examples of ESRs for different sectors are summarised as follows:

Entity/Sector	ESR
PEHE	Maintain an "adequate premises" criterion i.e.: <ul style="list-style-type: none"> • has an office in Singapore for the use of its employees; • shares a premise with an associated entity; or • the outsourced service provider performing core income-generating activity of PEHE has an office in Singapore.
Special purpose vehicle (SPV)	Assess ESR on the immediate holding company (IHC) to ensure that the IHC has effective control over the SPV, derives economic benefits from the activities carried out by the SPV and defines core investment strategies of the SPV.
Trust/S-REIT/Registered Business Trust (RBT)	<ul style="list-style-type: none"> • Core income generating activities are carried out by its Trustee/REIT manager/Trustee-manager in Singapore; • The trust deed outlines functions and responsibilities of the Trustee/REIT manager/Trustee-manager; and ability of beneficiaries/unitholders to terminate the Trustee/REIT manager/Trustee-manager; • The trustee/REIT manager/Trustee-manager allocates dedicated resources; • The trustee/REIT manager/Trustee-manager charges an arm's length fee for its services.

Disposal of foreign IPR

The sale or disposal of foreign IPR is subject to different rules and conditions.

The source of gains from the sale/disposal of IPR depends on the tax residency of the owner of the IPR, license or right in respect of the IPR.

The gains from the disposal of qualifying IPR are determined based on the OECD's "modified nexus approach" that links tax benefits to the existence of a nexus between income from the IPR and the expenditure contributing to that income. The modified nexus ratio determines the gains from the sale of IPR not subject to tax when received in Singapore. Qualifying IPR includes patent, patent applications, and copyrights in software as recognised under specific laws.

For non-qualifying IPR, the full amount of gains will be subject to tax when received or deemed received in Singapore.

Ascertainment of gains chargeable to tax, open market price and foreign tax credit

Gains chargeable to tax

Allowable and non-allowable expenditures for the purpose of ascertaining taxable gains:

Allowable	Non-allowable
a) Expenditure incurred to <ol style="list-style-type: none"> acquire, create or improve foreign assets; protect or preserve the value of foreign assets; or sell or dispose foreign assets. (including expenses incurred to finance the acquisition, creation and improvement of foreign assets)	a) Any expenditure that has been allowed a deduction against any other income, whether or not such income is chargeable to income tax
b) Any loss incurred from the sale or disposal of any other foreign asset	b) Capital expenditure (capex) computed as follows $D - E$ Where: D = amount of capex of the foreign asset for which a capital allowance has been claimed against any other income E = amount of any balancing charge made on the sale or disposal of the foreign asset

Net gains chargeable to tax =	Total gains – Allowable expenditures + clawback of previously claimed capital allowance
-------------------------------	---

Open market price

The gains must be determined based on the open market price.

Open market price is either:

- a. the price which the foreign asset could have been sold for in the open market on the date of its sale or disposal; or
- b. where the Comptroller is satisfied by reason of the special nature of the foreign asset that it is not practicable to determine the price mentioned in paragraph (a), such other value as appears to the Comptroller to be reasonable in the circumstances.

Where the disposal price is less than open market price, an adjustment will be made to bring the difference to tax when there is an amount of gain received in Singapore. If no amount of the gain is received in Singapore, the difference will not be subject to tax.

Foreign tax credit

Should the foreign gains be subject to foreign tax, a Singapore tax resident entity may claim double taxation relief, unilateral tax credit or elect for foreign tax credit pooling system to alleviate the foreign tax suffered on the foreign-sourced disposal gains.

Key takeaways

In light of these changes, it is time for companies to evaluate and review their investment structure, operation and divestment plans to mitigate any adverse tax consequences under Section 10L.

Notably, the non-taxation of capital gains under the statutory safe harbour made available under Section 13W cannot be relied upon for sale or disposal of foreign assets where the gains are received in Singapore.

Businesses with established economic substance in Singapore should not be impacted by the new rules. Nonetheless, it is advisable to assess the adequacy of economic substance, implement procedures to maintain economic substance, and ascertain tax implications regarding any future disposal of foreign assets. Where necessary, seeking an advance ruling from the IRAS may be considered.

With proper planning and proactive steps, Section 10L is not as daunting as it may seem.

CONNECT WITH US.

Like us, follow us, engage us through our social media channels:



This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained therein without obtaining specific professional advice. Please contact BDO Tax Advisory Pte Ltd to discuss these matters in the context of your particular circumstances. BDO Tax Advisory Pte Ltd, its partners, employees and agents do not accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.

BDO Tax Advisory Pte Ltd (UEN: 200818719H), a Singapore registered company, is a member of BDO International Limited, a UK company limited by guarantee and forms part of the international BDO network of independent member firms. BDO is the brand name for the BDO network and for each of the BDO Member Firms.