



Asia Tax Insights – Singapore
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Section 10L of the Income Tax Act 1947 Targets Foreign-Sourced Disposable Gains

The introduction of Section 10L in the Income Tax Act 1947 marks a fundamental shift in the taxation landscape, specifically targeting foreign-sourced disposal gains. Effective from 1 January 2024, gains resulting from the sale or disposal of foreign assets by a relevant entity, which are received or deemed to be received in Singapore, will be treated as taxable income. The new Section 10L applies when the relevant entity lacks adequate economic substance in Singapore or when the gains arise from the disposal of foreign intellectual property rights (IPRs).

Section 10L has been implemented to address international tax avoidance risks, particularly focusing on the non-taxation of disposal gains in the absence of real economic activities. This reiterates Singapore's commitment to attracting and anchoring substantive economic activities within its borders. In a parallel development, Hong Kong and Malaysia have also revised their foreign-sourced income taxation regimes, aligning with Singapore's approach by excluding gains from the disposal of foreign assets where economic substance requirements are not met.

To provide clarity on the scope of the new taxing provision, on 8 December 2023, the Inland Revenue Authority of Singapore (IRAS) published its e-Tax Guide - "Income Tax: Tax Treatment of Gains or Losses from the Sale of Foreign Assets." This e-Tax Guide outlines the economic substance requirements necessary for exclusion from tax, along with specific administrative requirements and advance ruling procedures.

Key Highlights - Relevant Entities vs Excluded Entities	
Relevant Entities	<p>Section 10L applies to entities within consolidated multinational entities (MNEs)</p> <ul style="list-style-type: none"> • if one of the entities is incorporated, registered or established in another jurisdiction, or • if at least one entity has a place of business outside Singapore. <p>Domestic groups and standalone entities, however, are excluded.</p>

Key Highlights - Relevant Entities vs Excluded Entities	
Excluded Entities	<p>Entities excluded from Section 10L are those with adequate economic substance, whose operations are managed and performed in Singapore.</p> <p>Factors considered for exclusion include the number and qualifications of employees, the amount of business expenditure, as well as the location and decision-maker responsible for key business decisions.</p>

Adequacy of Economic Substance

The e-Tax Guide outlines the economic substance considerations applicable to specific industries, including holding, headquarters and fund management companies.

However, there are currently no prescribed minimum thresholds to assess the adequacy of economic substance. This creates a level of uncertainty for businesses navigating these tax changes.

Advance Ruling

To mitigate this uncertainty, businesses can seek advance rulings from the IRAS on the adequacy of their economic substance, particularly when anticipating the sale or disposal of foreign assets within a year.

The validity of such rulings extends up to five years of assessment, covering subsequent disposals within this period, provided there are no changes in relevant facts, representations, tax laws or IRAS interpretations.

Administrative Requirements

For streamlined compliance, the e-Tax Guide outlines specific information businesses must include in their tax computations when submitting annual income tax returns. This is primarily aimed at facilitating the tracking of unremitted gains, utilisation of losses, allowable expenses, and information related to economic substance in Singapore.

Additionally, the e-Tax Guide specifies the records and supporting documents the businesses are required to maintain, such as sales proceeds, historical costs of foreign assets, and foreign tax paid, etc.

Key Takeaway

The introduction of Section 10L marks a paradigm shift in Singapore's taxation framework, specifically targeting foreign-sourced disposal gains. To navigate the tax changes more effectively, businesses are encouraged to proactively assess their investment structures, business operations and divestment plans.

References

You can find out more at https://www.iras.gov.sg/media/docs/default-source/e-tax/tax-treatment-of-gains-or-losses-from-the-sale-of-foreign-assets.pdf?sfvrsn=a0e0458b_7.

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