Worldwide tax system

Under the worldwide tax system, a country would tax its residents on all their income arising anywhere in the world. Countries such as the United States of America (USA) extend the worldwide system even to their citizens who are not tax residents.

Pure territorial tax system

Under a pure territorial tax system, a jurisdiction (such as Hong Kong) would tax only income sourced within that jurisdiction.

Territorial tax system

Some countries, such as Singapore, tax foreign-sourced income only if it is received in the country.

Under Singapore's charging provision, s 10 of the *Income Tax Act (Cap 134, 2014 Rev Ed)* (the "Act"), unless an exemption applies, tax is imposed on the income of any person:

- accruing in or derived from Singapore, or
- received in Singapore from outside Singapore.

Such a tax system is sometimes described as "territorial" (as it taxes also remittances of income), to distinguish it from the "pure territorial" system.

¶2-200 Tax entities

Under the Act, the term "person" includes a company and a body of persons (s 2). A "body of persons" means:

> "any body politic, corporate or collegiate, any corporation sole and any fraternity, fellowship or society of persons whether corporate or not corporate but does not include a company or a partnership" (s 2).

The following tax entities are subject to tax on their income falling within s 10(1):

- an individual
- a Hindu joint family (up to the year of assessment (YA) 2012 only)
- a company incorporated or registered in Singapore or elsewhere
- a trustee
- an executor
- a club
- an association, and
- a registered business trust (taxation is in the name of the trustee-manager).

Partnerships

A partnership is specifically excluded from the definition of a "body of persons" in s 2(1) and is therefore not a tax entity. Partners are taxed, either in their own capacity as individuals or as corporate partners, on their respective shares of the partnership income.

Sole proprietors

Similarly, a sole proprietor is taxed in his own personal capacity on the profits from the business.

Limited liability partnerships

A limited liability partnership (LLP) is legally a body corporate but is treated as a partnership for income tax purposes. This means that each partner of an LLP will be chargeable with tax on his share of the income from the LLP.

¶2-300 Income — Statutory, assessable and chargeable

The word "income" is not defined in the Act. The charging s 10, examined in Chapter 3 (at ¶3-100ff), categorises income into six different heads of charge, namely:

- income from trade, business, profession (TBP) or vocation
- employment income
- dividends, interest or discounts
- pension, charge or annuity
- rents, royalties, premiums and any other profits arising from property, and
- any other gains or profits of an income nature not falling within any of the above heads of charge.

Deductions against income

A person is allowed to deduct qualifying expenses incurred in the production of the income. Where a person carries on a TBP, he can claim capital allowances (CA) on capital expenditure incurred on the provision of plant or machinery for the purposes of that TBP. Various conditions apply. Deductions and CA are discussed in Chapter 7 (at ¶7-100ff) and Chapter 8 (at ¶8-100ff) respectively.

Income tax is imposed at applicable tax rates (see ¶2-700) on the chargeable income of a person.

Statutory income

The **statutory income** of a person for any YA is the aggregate of his income from each source for the year preceding the YA. Statutory income, which includes foreign income received in Singapore but excludes exempt income, is arrived at after deducting:

- expenses allowable against each source of income, and
- applicable CA.

Assessable income

Assessable income (s 37(1)) is the remainder of statutory income after deducting:

- any loss incurred in any TBP or vocation, and
- approved donations.

Chargeable income

A person's **chargeable income** for any YA is defined as the remainder of his assessable income after reliefs and deductions allowed in Pt X of the Act (s 38). As these reliefs and deductions (see Chapter 12 at ¶12-100ff) are available only to individuals resident in Singapore, the chargeable income of a company would, technically, equal its assessable income.

¶2-410 Basis of assessment

Year of assessment

The statutory tax year for which income tax is calculated and charged is known as the YA. Each YA begins on 1 January and ends on 31 December.

Example 1

Year of assessment 2018 refers to the period 1 January 2018 to 31 December 2018.

Basis period

On the other hand, the "basis period" for a YA means "the period on the profits of which tax for that year falls to be assessed" (s 2(1)).

Preceding year basis

Singapore adopts the *preceding year basis of taxation* for all sources of income (s 35(1)).

Example 2

The income to be brought to tax for YA 2018 is therefore the income accruing in or derived from Singapore or received in Singapore from outside Singapore for the basis period 1 January 2017 to 31 December 2017.

Preceding calendar year basis

The **preceding calendar year basis** is applied for all income derived by an individual, including income from a TBP or vocation in respect of which the individual's accounts are made up to 31 December.

Preceding accounting year basis

The **preceding accounting year basis** of taxation applies, however, to any source of TBP or vocation in respect of which the individual's accounts are made up to a date other than 31 December.

Example 3

Mr Ho derived total income of $54,000 from employment and rental for the period 1 January 2017 to 31 December 2017.

The income of $54,000 ("statutory income") is derived during the year 2017 and will therefore be assessable for YA 2018.

The following paragraphs explain how the accounting year basis is applied.

A person whose accounts are made up to a date other than 31 December is required to adopt the preceding accounting year as the basis period.

Example 4

The profits of the accounting year ended 30 November 2017 are taxed for YA 2018.

Where the accounting year basis is to be adopted in determining a person's statutory income, the following rules apply with effect from YA 2009 (s 35(4)):

- For individuals, the accounting year basis shall apply only to the statutory income from any TBP or vocation carried out in sole proprietorships or in partnerships.

Example 5

Mr Wong is the sole proprietor of an electronics retail business and he owns two residential properties that are rented out. The financial year-end of his business is 31 January.

His statutory income for YA 2018 will comprise:

- taxable income from his retail business for the year ended 31 January 2017, and
- net rental income for the year 1 January 2017 to 31 December 2017.

- For companies and bodies of persons (eg clubs, charities, associations, etc), the accounting year basis shall apply to the statutory income of that person from *all* sources.

Example 6

Twinkle-Bright Pte Ltd prepares its annual accounts from 1 April to 31 March each year.

The basis period for YA 2018 will be the 12-month period from 1 April 2016 to 31 March 2017. Trade income and non-trade income earned during this period will be regarded as income assessable for YA 2018.

¶2-500 Change of accounting date

A person can change the accounting date of his existing TBP if he so desires. No prior approval is required from the Comptroller of Income Tax (the "Comptroller"). The change may be a result of:

- a re-organisation
- the acquisition of another company that has a different accounting date
- a management decision, or
- any other commercial reason.

In some cases, the change may be motivated for tax reasons, ie in an attempt to obtain a tax advantage. For example, in order to qualify for the loss-transfer system of group relief, companies are, as a condition, required to adopt the same accounting date (see Chapter 9 at ¶9-100ff).

Comptroller's power to compute statutory income upon change in accounting date

Where there is a change of accounting date, the Comptroller has discretionary powers to compute the income of the related YAs as he thinks fit (s 35(6)).

The Comptroller's discretion to compute the statutory income is confined to three YAs:

- the YA in which the taxpayer fails to make up its accounts to the usual accounting date (the so-called "failure year"), and
- the following two YAs.

Examples 7 and 8 explain how the Comptroller would generally exercise his discretion in a scenario where a post-1968 TBP adopts a change of accounting date (different considerations govern a pre-1969 trade because the preceding year basis of assessment took effect only from 1969). Note that there is no "fall out" or double taxation of profits as the total profits made over the period of change would be equal to the total profits brought to charge.

Example 7

Lowkey Ltd commenced trading on 1 January 2000 and makes up its accounts to 30 September. In 2017, it changed its accounting date to 31 December and prepared the 15-month accounts from 1 October 2016 to 31 December 2017.

Note that the failure year is YA 2017, the year Lowkey fails to make its accounts to its usual date, ie 30 September 2017. The Comptroller has the discretion to determine the basis period and the statutory income for the failure year, ie YA 2017, and the following two YAs, ie YA 2018 and YA 2019.

The basis periods for the relevant YAs could be determined under two alternatives:

YA	Alternative 1 Basis period	Alternative 2 Basis period
2017 (failure year)	1 October 2015 to 30 September 2016 (12 months)	1 October 2015 to 30 September 2016 (12 months)
2018	1 October 2016 to 31 December 2017 (15 months)	1 October 2016 to 30 September 2017 (12 months)
2019	1 January 2018 to 31 December 2018 (12 months)	1 October 2017 to 31 December 2018 (15 months)

In this example, the Comptroller would need to exercise his discretion to determine the basis periods for YA 2018 and YA 2019. Observe that the profits for the three-month period 1 October 2017 to 31 December 2017 could be assessed in either YA 2018 or YA 2019. If the Comptroller is satisfied that the change was not tax-motivated, he may adopt Alternative 1 in determining the basis periods for YA 2018 and YA 2019. However, if he is of the opinion that the change was made to obtain a tax advantage (eg if the tax rate for YA 2019 is higher than that for YA 2018), he has the power to adopt Alternative 2.

Example 8

Hifi Ltd commenced business on 1 April 2000 and prepares accounts to 31 December. In 2017, the company decided to change its accounting date from 31 December to 31 July and prepared its seven-month accounts to 31 July 2017.

The basis periods for the following YAs could be determined under two alternatives:

YA	Alternative 1 Basis period	Alternative 2 Basis period
2017 (failure year)	1 January 2016 to 31 December 2016 (12 months)	1 January 2016 to 31 December 2016 (12 months)
2018	1 January 2017 to 31 July 2017 (7 months)	1 January 2017 to 31 December 2017 (12 months)
2019	1 August 2017 to 31 July 2018 (12 months)	1 January 2018 to 31 July 2018 (7 months)

The Comptroller may adopt Alternative 1 in determining the basis periods for YA 2018 and YA 2019 if he is satisfied that the change was not tax-motivated. However, if he is of the opinion that the change was made to obtain a tax advantage (eg if the tax rate for YA 2019 is lower than that for YA 2018), he has the power to adopt Alternative 2.

RESIDENCE

¶2-600 Residence

A person can be resident or non-resident for tax purposes. The definition of "resident in Singapore" for individuals, companies and body of persons is given in s 2. The residency status of a person for each YA may have an impact on its income tax liability and obligations. The tax treatment may differ depending on the residency status, eg:

- applicable tax rates
- the exemption of income, and
- the availability of personal reliefs and foreign tax credits.

These are further discussed in Chapter 12 (at ¶12-100ff) on Taxation of Resident Individuals and Chapter 13 (at ¶13-100ff) on Taxation of Non-residents.

¶2-610 Residence of an individual

"Residence" can have a different meaning depending on the context in which it is used. In relation to an individual, residence is usually taken to mean the place where he normally lives and sleeps, where he carries on business or employment and where he is to be found daily. Residence for tax purposes, however, does not solely depend on where one is born, where one is domiciled, what one's nationality is or the place one calls home.

For income tax purposes, the notion of residence differs from that for other purposes. For instance, an individual may be a permanent resident of Singapore under the immigration rules, but he may or may not be a tax resident in Singapore.

Definition of "resident in Singapore"

Under s 2(1) of the Act, "resident in Singapore"—

> "(a) in relation to an individual, means a person who, in the year preceding the year of assessment, resides in Singapore except for such temporary absences therefrom as may be reasonable and not inconsistent with a claim by such

person to be resident in Singapore, and includes a person who is physically present or who exercises an employment (other than as a director of a company) in Singapore for 183 days or more during the year preceding the year of assessment."

When determining the residency status of an individual for any YA, one must look at his personal circumstances in the year preceding the YA. There is no statutory provision in Singapore for treating an individual as a tax resident for part of a year and a non-resident for the remaining part of a year. This means that an individual will either be resident or non-resident for the whole YA.

From the definition of "resident in Singapore", the first test is **qualitative**.

An individual is resident in Singapore for a YA if, in the year preceding the YA, he resides in Singapore except for such temporary absences from Singapore as may be reasonable and not inconsistent with his claim to be resident in Singapore.

The second test, which is an alternative test for residence, is a **quantitative** one that consists of two "sub-tests":

(i) the **duration of physical presence** (ie stay) in Singapore is ≥ 183 days in the calendar year preceding the YA concerned, and

(ii) the **duration of employment** (but not as a company director) exercised in Singapore is ≥ 183 days in the calendar year preceding the YA concerned.

The duration of employment includes weekends, public holidays and any absences from Singapore that are temporary (eg overseas vacation leave) or incidental to the employment (eg business trips) (**source:** Inland Revenue Authority of Singapore's (IRAS') website at www.iras.gov.sg).

If either of these sub-tests is satisfied, the individual will be resident for that YA.

Qualitative test

The meaning of the terms "resides" and "temporary absences" found in the qualitative test are now examined.

"resides"

The term "resides" is not statutorily defined. The ordinary meaning of "reside", as defined in the *Oxford English Dictionary*, is:

> "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place".

This definition was quoted with approval by Viscount *Cave* in *Levene v IRC* (1928) 13 TC 486.

Determining the residency status of an individual is essentially a question of fact. The following factors are relevant:

- whether the individual has family ties in Singapore
- whether the individual has accommodation available to him in Singapore
- whether the individual is in Singapore or abroad for a temporary purpose
- whether the individual has set up a permanent home in Singapore or abroad, and
- the frequency, regularity and duration of visits to Singapore and the purpose of such visits.

"temporary absences"

An individual can qualify as resident in Singapore even though he may be away from Singapore during the whole year, part of the year, or even a few years. This is provided that the individual's absences from Singapore:

- are considered as "temporary", and
- are reasonable and not inconsistent with the claim that he is resident in Singapore.

Absence from Singapore generally should not be with a view or intent to establish a residence abroad.

Example 9

If an employee went to New York on a permanent transfer and took up a permanent position there, the employee's absences from Singapore would not satisfy the proviso above.

The term "temporary absences" does not necessarily mean a shorter duration abroad as compared to the presence of the individual in Singapore. Whether an absence for an extended period may be regarded as "temporary" would depend on the:

- purpose behind the absence (*Re Young* 1 TC 57)
- duration of the absence. In *Federal Commissioner of Taxation v Applegate* 79 ATC 4307, the Court considered that it is a matter of degree and suggested that an absence over a period of 10 years could not reasonably be regarded as a temporary absence.

In *Rogers v IRC* (1879) 1 TC 225, a seaman working abroad over the entire duration of a tax year, but whose family remained in the United Kingdom (UK), was taxed on a resident basis. The Court said:

> " . . . The circumstance that Captain Rogers has been absent from the country during the whole year to which the assessment applies does not seem to me to be a specialty of the least consequence. That is a mere accident. He is not a bit the less a resident in Great Britain because the exigencies of his business have happened to carry him away for a somewhat longer time than usual during this particular voyage."

Example 10

Ronald Lee, a Singaporean who has lived and worked in Singapore all his life, was seconded to his company's head office in New York for the period 1 June 2017 to 30 November 2019. During that 30-month period, Lee returned to Singapore twice for holidays, each time for five days.

Under the qualitative test, Lee will be resident in Singapore for YA 2018 to YA 2020 (inclusive).

Quantitative test

The quantitative test is an alternative test of residence for individuals who do not qualify as resident under the qualitative test. Under the quantitative test, an individual:

- who is physically present in Singapore, or
- who exercises employment in Singapore (other than as a director of a company) for 183 days or more in the calendar year preceding the YA in Singapore

is treated as resident for tax purposes.

In calculating the 183-day limit:

- the 183 days need not be continuous, and
- presence in Singapore for any part of a day is counted as presence for one whole day (s 2(2)).

Example 11

(a) Professor Black is English and lives with her family in London and works at the University of London. She came to Singapore on 15 January 2018 as a visiting professor of a local university for a term of three months.

Professor Black will be regarded as not resident in Singapore for YA 2019.

(b) In January 2018, John, an American, came to Singapore on a temporary assignment to work as a marketing executive of the Singapore branch of his US employer. The project is for a term of nine months.

As John will be employed/present in Singapore for more than 183 days in 2018, he will be regarded as resident in Singapore for YA 2019.

(c) A foreigner who is in Singapore from 1 August 2018 to 20 June 2019 would not be treated as resident in Singapore for YA 2019 or YA 2020 as his stay in Singapore is less than 183 days in 2018 and in 2019 respectively.

(d) By contrast, a foreigner who is in Singapore from 1 January 2018 to 20 November 2018 would be treated as resident in Singapore for YA 2019 as his stay in Singapore exceeds 183 days in 2018.

It is therefore possible that two foreigners working in Singapore for the same period of time may have different residency status and consequently different tax liabilities in Singapore merely because they commenced their employment on different dates.

To remove/reduce any potential inequity, the IRAS implemented the following two-year and three-year administrative concessions for foreigners working in Singapore.

Administrative concession for foreigners working in Singapore

The **two-year concession** applies to an individual who enters Singapore on or after 1 January 2007 and whose continuous stay (including work) in Singapore is at least 183 days straddling two calendar years. In such a situation, the individual will be regarded as resident for both YAs. This concession is an enhancement of the three-year concession.

Under the **three-year concession** which applies to individuals entering Singapore before or from 1 January 2007, a foreigner who stays or works in Singapore continuously for three consecutive years would be treated as a resident for all the three YAs even if the number of days in Singapore is less than 183 days in the first and/or third year.

Example 12

If the individual's employment in Singapore spans from 15 August 2017 to 31 March 2019, he would have been regarded as resident in Singapore from YA 2018 to YA 2020 as a concession.

Example 13

(a) Charles, a foreigner, arrived in Singapore on 14 August 2017 and commenced employment on 15 August 2017. He ceased employment in Singapore on 15 September 2018.

Under the two-year concession, he will be regarded as resident for both YA 2018 and YA 2019.

(If the quantitative test in s 2(1) is strictly followed, he would have been assessed as non-resident for YA 2018 and resident for YA 2019.)

(b) David, a foreigner, came to Singapore on 1 August 2017 and commenced employment with a local information technology company on the same day. He completed his 20-month employment on 31 March 2019.

Under the three-year concession, David will be regarded as resident for all three YA 2018, YA 2019 and YA 2020.

The above IRAS concessions apply to a foreign employee, but not to:

- a company director
- a public entertainer, or
- an individual who is exercising a profession under s 10(1)(a) (source: IRAS' website at www.iras.gov.sg).

The purpose of the concession is to reduce the individual's tax liability. If an individual finds that he is better off paying less tax based on his residency status as determined under s 2(1), he need not avail himself of the concession.

Letter of undertaking from employer

Granting such a concession (ie treating the individual as a resident for all the YAs concerned) may result in an unintended reduction in the individual's tax liability for the first YA (to which the date of his arrival relates). This may occur, eg when the individual left his job without serving the minimum period of 183 days straddling two calendar years. To ensure that the tax properly payable by him in these circumstances is collectible, the Comptroller may require the individual to furnish, at the outset, a letter of undertaking from his employer to guarantee the payment of the difference in tax payable between the resident and non-resident bases of assessment if he leaves Singapore without satisfying the 183-day condition.

Company directors

The definition of "employee" in s 2(1) includes a director of a company. However, the definition of "resident in Singapore" for an individual does not extend the duration of employment exercised in Singapore under the quantitative test to a director.

Executive director

A director is an executive director (also called working director) if he works for the company more or less full-time and is involved in the day-to-day management of the company.

Non-executive director

He is a non-executive director if his involvement with the company is limited to attendance at meetings of the board of directors.

The IRAS recognises this distinction and, as another concession, allows the "duration of employment" test of residence to be applied to an executive director. For a non-executive director, his residency status is established on the basis of:

- the qualitative test, or
- the physical presence test only.

¶2-620 Residence of a company

A company is "resident in Singapore" if the **control and management** of its business are exercised in Singapore (s 2(1)). The phrase "control and management" is not defined. Control and management do not mean the carrying on of the company's day-to-day business. Consequently, the locale of trading activities or physical operations is not necessarily the place where control and management are exercised.

In the UK, the corresponding test for corporate residence is "central management and control". Tax cases there have identified this with the governing body vested with the superior directing authority, ie policy-level decision-making powers. Such authority is typically vested in the company's board of directors under the company's constitution. The fact that shareholders have the power to remove directors is not relevant in this respect (but see exception of "controlling shareholder" below). In practical terms, superior directing authority includes the authority to decide such matters as:

- whether the company is to cease operations entirely
- what the company's business will be
- whether and when a dividend is to be declared, and
- whether a merger or acquisition is to go ahead.

The location where the central management and control of a company are exercised is a question of fact to be determined by a scrutiny of the course of the business or trading (*De Beers Consolidated Mines Ltd v Howe* (1906) 5 TC 198).

In *NB v CIT* (2006) MSTC 5,571; [2006] SGITBR 2 (para 26), the Singapore Board of Review affirmed that there was no difference between the UK test of "central management and control" and the test of "control and management" in s 2(1).

Board of directors meetings

As a general rule, therefore, a company is resident in Singapore if its board of directors holds its board meetings in Singapore, exercising the control and management of the company's business. In the rare situation, however, where the directors "stand aside" from their directorial duties such that the control and management of the company's business are in fact exercised by another body (eg a controlling shareholder), the superior directing authority will vest with that body instead. This situation may occur, eg where the board of directors effectively relinquishes its directorial functions by:

- not even holding any meetings in exercise of those functions, or
- holding meetings but merely rubber-stamping the instructions that emanate from the parent company (in other words, without giving any independent input as a board into the decision-making process).

Country of incorporation

In determining the residence of a company for Singapore tax purposes, the country of incorporation does not matter. A foreign-incorporated company will be resident in Singapore if the control and management of its business are exercised in Singapore. Conversely, a Singapore-incorporated company will be non-resident if the control and management of its business are exercised outside Singapore.

Change in place of residence

A company may change its place of residence. It can be resident in Singapore for one YA and non-resident for another. The definition of "resident in Singapore", in relation to a company, omits the reference "the year preceding the year of assessment" found in the same s 2(1) definition in relation to an individual. It is therefore arguable that, unlike for an individual, the residency status of a company for any YA is determined by reference to the circumstances in the YA itself and not to those in the year preceding the YA. In practice, however, the IRAS looks at the year preceding the YA when determining corporate residence.

Differences in tax treatment of resident and non-resident companies

Unless an exemption applies, both resident and non-resident companies are subject to tax on income accruing in or derived from Singapore and foreign income received in Singapore. However, some tax implications differ:

- only a Singapore resident company may pay an exempt one-tier dividend, while a non-resident company pays a foreign dividend (see Chapter 10 at ¶10-100ff)
- only a Singapore resident company qualifies for tax treaty benefits, such as the reduction or exemption of tax on income arising in the treaty country
- only a Singapore resident company qualifies for the foreign-sourced income exemption under s 13(8) (see Chapter 14 at ¶14-100ff)
- certain types of income paid to a non-resident company (but not to a resident company) are subject to withholding tax (see Chapter 13 at ¶13-100ff), and
- only a Singapore resident company qualifies for the enhanced tax exemption for new companies (see ¶2-900).

¶2-650 Inward redomiciliation regime for companies in Singapore

The new Pt XA of the *Companies Act* (Transfer of Registration) contains the inward redomiciliation regime for companies in Singapore. The regime takes effect from 11 October 2017. It allows foreign corporate entities to transfer their registration from their original jurisdiction to Singapore where the original jurisdiction allows outward redomiciliation. For example, a foreign corporate entity may want to relocate its regional and worldwide headquarters to Singapore and still retain its corporate history and branding. Compared with registering a subsidiary in Singapore, redomiciliation may minimise operational disruption to the company. Foreign entities may choose to redomicile for reasons such as:

- pro-business legislation
- easier access to capital markets, and
- proximity to suppliers and customers.

To be able to redomicile, they must be bodies corporate that can adapt their legal structure to the companies limited by shares structure under Singapore's *Companies Act*. In addition, they must meet certain prescribed requirements and their applications for redomiciliation are subject to the Registrar of Companies' (or the Accounting and Corporate Regulatory Authority's (ACRA's)) approval.

The inward redomiciliation regime has extensive implications on many income tax topics such as:

- deductions
- capital allowances, and
- foreign tax credits

(see Chapters 7, 8 and 14 respectively).

For this reason, the general legal aspects of the regime are set out below as background (source: ACRA website at www.acra.gov.sg).

A foreign corporate entity that redomiciles to Singapore will become a Singapore company and will be required to comply with the *Companies Act* like any other Singapore incorporated company. Redomiciliation will not affect the obligations, liabilities, properties or rights of the foreign corporate entities.

The **minimum requirements** for transfer of registration are:

- size criteria. The foreign corporate entity must meet any two of the following criteria in the two financial years immediately preceding its application:
  - its total assets exceeds $10m in value
  - its annual revenue exceeds $10m
  - it has more than 50 employees
- solvency criteria:
  - there is no ground on which the foreign corporate entity could be found to be unable to pay its debts
  - it is able to pay its debts as they fall due during the period of 12 months after the date of the application for transfer of registration
  - it is able to pay its debts in full within the period of 12 months after the date of winding up (if it intends to wind up within 12 months after applying for transfer of registration)
  - the value of its assets is not less than the value of its liabilities (including contingent liabilities)
- the foreign corporate entity is authorised to transfer its incorporation under the law of its place of incorporation
- the foreign corporate entity has complied with the requirements of the law of its place of incorporation in relation to the transfer of its incorporation
- the application for transfer of registration is:
  - not intended to defraud existing creditors of the foreign corporate entity, and
  - made in good faith, and
- other minimum requirements include the foreign corporate entity:
  - not being under judicial management
  - not being in liquidation, or
  - not being wound up etc.

¶2-700 Rates of tax

Resident individuals

Resident individuals are taxed at progressive tax rates set out in Table 3 of Pt A of the Second Schedule (for rates applicable from YA 2017) (s 42) (the concept of "Hindu joint family" was removed from the Act from YA 2013).

To increase the progressivity of the personal income tax rate regime and strengthen future revenues, a revised tax rate structure (with a top tax rate of 22% for chargeable income above $320,000) applies from YA 2017.

See ¶2-950 and ¶2-955 for the tax rate structures.

Tax rebates

For YA 2015, resident individuals qualified for a tax rebate of 50%, subject to a cap of $1,000.

There was no tax rebate for resident individuals for YA 2016.

For YA 2017, resident individuals qualified for a tax rebate of 20% of tax payable, subject to a cap of $500.

Non-resident individuals

Non-resident individuals are subject to tax at a flat rate of 22% on Singapore-sourced income (eg rental income and director's fees) from YA 2017. However, under certain conditions, certain income such as interest and royalties may be subject to:

- a final tax rate of 15% or 10%, or
- a lower tax rate as provided for under the Act or tax treaties.

Singapore-sourced employment income

For Singapore-sourced employment income, relief is provided under s 40B. The non-resident individual is subject to tax on such income:

- at a flat rate of 15%, or
- at the resident rates with reliefs,

whichever tax liability is the higher (see Chapter 13 at ¶13-130).

Short-term visiting employees

Where a short-term visiting employee exercises an employment in Singapore for 60 days or less in the calendar year however, he is tax exempt on income derived from that employment for the YA concerned under s 13(6) (see Chapter 5 at ¶5-130).

Historical Note: Non-resident Singapore citizens

Prior to YA 2016, non-resident Singapore citizens with Singapore-sourced income were eligible for reliefs under s 40(1). The progressive rates set out in Pt C of the Second Schedule (see ¶2-960) were used to calculate the reliefs (see Chapter 13 at ¶13-110). The s 40(1) relief was withdrawn from YA 2016.

Withholding tax on certain types of income

Certain types of income withdrawn by or paid to non-resident individuals are also subject to withholding tax.

Companies resident in Singapore

From YA 2010, the corporate tax rate for companies resident in Singapore is 17%.

Partial tax exemption scheme

The tax rate is applied on chargeable income after deducting an amount of income exempt under the partial tax exemption scheme. From YA 2008 up to YA 2019, the maximum amount of this exempt income is $152,500 (see ¶2-850 for changes to the partial tax exemption scheme announced in the 2018 Budget).

To encourage start-ups, qualifying new companies resident in Singapore are entitled to a maximum exemption of $200,000 of their normal chargeable income for the first three qualifying consecutive YAs (see ¶2-900).

Corporate tax rebate — YA 2013 to YA 2015

From YA 2013 to YA 2015, companies qualified for a 30% tax rebate capped at $30,000 for each YA.

Corporate tax rebate — YA 2016

To help companies, especially small and medium enterprises, the corporate tax rebate was raised from 30% to 50% for YA 2016; capped at $20,000.

Corporate tax rebate — YA 2017

To help companies cope with the economic uncertainty and continue restructuring, the corporate tax rebate was raised from $20,000 to $25,000 for YA 2017; the rebate rate remained unchanged at 50%.

Corporate tax rebate — YA 2018

In the 2017 Budget, it was announced that the tax rebate would be extended for another year to YA 2018, but at a reduced rate of 20% of tax payable and capped at $10,000. This tax rebate has been enhanced as announced in the 2018 Budget to 40% of tax payable, capped at $15,000.

Corporate tax rebate — YA 2019

As announced in the 2018 Budget, the corporate tax rebate will be extended for another year to YA 2019, at a rate of 20% of tax payable, capped at $10,000.

Corporate tax rate

Singapore's corporate tax rate has been decreasing over the years (see below):

Year of Assessment	Tax rate
From 2010 onwards	17%
2008 to 2009	18%
2005 to 2007	20%
2003 to 2004	22%
2002	24.5%
2001	25.5%
1997 to 2000	26%
1994 to 1996	27%

Year of Assessment	Tax rate
1993	30%
1991 to 1992	31%
1990	32%
1987 to 1989	33%
Up to 1986	40%

Non-resident companies

From YA 2010, non-resident companies are also subject to tax at 17% and may qualify for the partial tax exemption as well (conditions apply). The tax rate may be reduced for certain incomes (see Chapter 13 at ¶13-100ff).

Trustees and executors

From YA 2010, trustees (other than a trustee for an incapacitated person) and executors of estates are subject to tax at 17%.

Clubs and associations

From YA 2010, bodies of persons (such as clubs and associations) qualify for the partial tax exemption scheme (see ¶2-850) and are subject to tax at 17%.

Historical Note: Prior to YA 2010

Up to YA 2009, such bodies of persons were not eligible for the partial tax exemption scheme and were subject to the progressive tax rates in Pt B of the Second Schedule (see ¶2-980).

¶2-800 Business entities

Businesses in Singapore can be carried out in one of the following forms:

- sole proprietorship
- partnership
- limited liability partnership (LLP)
- limited partnership (LP)
- company
- branch, and
- registered business trust (RBT).

Sole proprietorships and partnerships

Sole proprietorships and partnerships (not including LLPs) are not legal entities and are not separate tax entities for income tax purposes. The sole proprietors and individual partners will be taxed in their own personal capacity on the profits derived from such businesses. In a partnership where the partners are companies, the partnership income will be allocated to and taxed in the hands of the corporate partners.

Limited liability partnerships

An LLP is a body corporate (a separate legal entity) but is basically treated as a general partnership for income tax purposes. This means that the partners of an LLP will be taxed on their share of the income from the LLP (see Chapter 11 at ¶11-420).

TAXATION OF NON-RESIDENT INDIVIDUALS

¶13-100 Taxation of non-resident individuals

Non-resident individuals are subject to tax on all Singapore-sourced income unless the income is exempt from tax, such as interest income from a deposit in an approved bank in Singapore (s 13(1)(t)). Foreign income received in Singapore by a non-resident individual is exempt from tax (s 13(7A)(a)).

A non-resident individual is subject to tax on Singapore-sourced income at 22% (from the year of assessment (YA) 2017) except the following, among others:

- Singapore employment income is assessed:
  - at a flat rate of 15%, or
  - at the applicable resident rates,

  whichever results in a higher tax liability (s 40B)
- certain income deemed to be Singapore-sourced under s 12(6) or s 12(7) (eg royalties, interest, know-how payments and rent from movable property) is subject to withholding tax at either 15% or 10% (as the case may be); the tax is a final tax (conditions apply) (s 43(3) and 43(3A))
- gains from the disposal of any real property assessable under s 10(1)(a) derived by a non-resident real property trader are subject to withholding tax at 15% (s 45D(1))
- income derived from Singapore as a non-resident professional is subject to withholding tax at 15% (final tax) unless an election is made (in which case, a 22% tax rate on a net basis applies from YA 2017) (s 43(4), 43(5) and 45F), and
- income derived from Singapore as a non-resident public entertainer (from 22 February 2010 to 31 March 2020) is subject to withholding tax at 10% (s 45GA; see ¶13-120).

Only resident individuals are entitled to personal reliefs under s 39 (see Chapter 12 at ¶12-100ff). Certain other reliefs are, however, available to non-resident individuals, eg s 40, 40A, 40B, 40C and 40D reliefs (see ¶13-110 to ¶13-150).

¶13-110 Relief for non-resident Singapore citizens and others

To simplify the personal income tax system, s 40 reliefs no longer apply from YA 2016 (s 40(7)).

Historical Note: Position up to YA 2015

For the tax treatment concerning s 40 reliefs up to YA 2015, see the 2016/17 edition of this book.

¶13-120 Relief for non-resident public entertainers

Non-resident public entertainers are given s 40A relief whereby their Singapore income net of allowable deductions is subject to tax at a flat rate of 15% or 10% depending on when the income was earned. Other Singapore-sourced income is generally subject to a 22% tax rate from YA 2017.

"Public entertainers" refer to stage, radio or television artistes, musicians and athletes or individuals exercising any profession, vocation or employment of a similar nature (s 40A(4)).

Income of non-resident public entertainer excluded from s 40A relief

The s 40A relief does not apply to the following income of a non-resident public entertainer (s 40A(1)):

- any withdrawal from the non-resident's Supplementary Retirement Scheme (SRS) account deemed to be income subject to tax under s 10L, or
- income from the exercise of any other employment in Singapore.

Instead, the non-resident public entertainer can claim s 40D relief for the above income (see ¶13-150).

Reduced 10% withholding tax rate from 22 February 2010 to 31 March 2020

Gross income derived by a non-resident public entertainer from services performed in Singapore for the period from 22 February 2010 to 31 March 2020 is subject to a withholding tax of 10% (s 40A(2A), 45GA). The reduction in tax rate (from 15%) to 10% for the initial five-year period to 31 March 2015 was aimed at helping local organisers attract high quality performances to Singapore, and was extended for another five years to 31 March 2020 (s 45GA(2A)).

Gross income refers to both monetary and non-monetary payments and includes, but is not limited to:

- (in the case of artistes) — artiste fees, allowances, eg *per diem* allowances, and benefits-in-kind, and
- (in the case of sportsmen) — match fees, prize money, tournament winnings, win bonuses, allowances, eg *per diem* allowances, benefits-in-kind and non-cash gifts/prizes exceeding $100.

Administrative concession for accommodation and airfare provided by payer

As a concession, the following benefits provided by the payer are not taxable:

- accommodation (excluding value of food) for short-term engagements of 60 days or less in any calendar year, and
- cost of airfare.

If accommodation is provided for 61 days and above in a calendar year, the cost of accommodation for the entire stay is taxable.

Deductible expenses

Only expenses:

- which are wholly and exclusively incurred by the entertainer in the production of the Singapore-sourced income, and
- which are not reimbursed by the payer

are deductible.

As a concession, the following costs incurred by the public entertainer are deductible:

- accommodation (excluding value of food) for short-term engagements of 60 days or less in any calendar year, and
- cost of airfare.

If the stay in Singapore is for 61 days and above in a calendar year, the cost of accommodation for the entire stay is not deductible.

Non-deductible expenses

- Private expenses (eg value of food and ground transfers to and from airport), and
- expenses incurred to put the public entertainer in a position to earn the income (eg transport expenses incurred from hotel to the venue of service and back).

(See IRAS' website at www.iras.gov.sg, updated as at 29 April 2016.)

Example 1

Ms Young, a public entertainer, has a contract to perform in Singapore for 20 days in 2018 for a fee of $10,000. She is provided with hotel accommodation at $200 a day. Ms Young pays her own airfare of $1,000. She does not incur any other expenses. Her tax liability for YA 2019 would be as follows:

	$
Fees	10,000
Hotel accommodation provided (not taxable by concession)	–
	10,000
Less: Airfare paid by the public entertainer (concession)	(1,000)
Taxable income	9,000
Withholding tax @ 10%	900

If the contract provides for Ms Young's Singapore income tax to be borne by the sponsor, Ms Young will be taxable on that benefit as it constitutes income in her hands. Her net-of-tax amount will be $9,000, and the calculations are as follows:

	$
Taxable income, as above	9,000
Add: Income tax borne by sponsor ($9,000 × 10/90)	1,000
Total taxable income	10,000
Withholding tax @ 10%	1,000

Non-resident public entertainer exercising employment in Singapore

A public entertainer does not qualify for s 13(6) exemption merely because:

- he is an employee by status, and
- his visit to Singapore does not exceed 60 days in a calendar year (s 13(7)).

The s 13(6) exemption would apply only if, as an additional condition, his visit was substantially supported from the public funds of the Government of a foreign country.

In practice, foreign actors coming to Singapore in connection with the shooting of scenes are normally not regarded as public entertainers for tax purposes. If such a foreign actor is an employee by status, the tax treatment set out in ¶13-130 below will apply.

¶13-130 Relief for non-resident employees

A non-resident employee is assessed to tax on income derived from the exercise of employment in Singapore:

- at either a flat rate of 15%, or
- on the basis that he were resident,

whichever gives a higher tax liability (s 40B).

Taxation of non-resident employment income on resident basis

From YA 2018, in calculating the amount of tax payable on the basis that the non-resident employee were a resident, the cap of $80,000 on the total amount of personal reliefs will apply (s 40B(3A)).

Taxation of non-resident employment income at 15%

The 15% tax is applied on employment income:

- net of deductible expenses, but
- without any deduction for personal reliefs.

Non-employment income

All other Singapore-sourced income is subject to 22% tax from YA 2017, unless it:

- qualifies for a reduced tax rate, or
- is exempt from tax (eg interest income from a fixed deposit with an approved bank).

Definition of non-resident employee

A non-resident employee is an individual who has exercised an employment in Singapore for such period of time as not to qualify for the status of a resident and:

- includes an individual who is in receipt of leave pay attributable to a period of employment in Singapore, but
- excludes a company director.

However, the current Inland Revenue Authority of Singapore's (IRAS) practice is to extend the s 40B relief to a full-time working director.

In practice, therefore, s 40B relief typically applies to a non-resident individual who exercises an employment in Singapore for a period between 61 days and 182 days (inclusive) during the calendar year. The reason is that:

- he would be exempt from tax on the Singapore employment income if he had exercised the employment as a short-term visiting employee in Singapore for 60 days or less, and
- he would have qualified to be a resident in Singapore if that period was 183 days or more.

Short-term visiting employment

It is understood that the IRAS treats an individual as exercising a short-term visiting employment only if his employment in Singapore straddles at most two calendar years.

Example 2

An expatriate who exercises employment in Singapore that begins on 15 November 2017 would therefore qualify for the 60-day exemption for YA 2018 if the employment ends on 14 July 2018, but not if it ends on 14 July 2019.

If his stay (including employment) in Singapore is continuous and straddles 183 days or more over two calendar years, he may elect, by IRAS concession, to be taxed as a resident for the YAs concerned (see Chapter 2, ¶2-610).

Income of non-resident employee excluded from s 40B relief

The s 40B relief does not apply to the following income of non-resident employees (s 40B(1)):

- any withdrawal from the employee's SRS account deemed to be income subject to tax under s 10L, or
- income derived as a public entertainer.

Application of tax treaties

Note that the above domestic tax treatment is subject to the applicable tax treaties. Where an individual is resident in a country with which Singapore has a tax treaty, it is possible that the treaty prevents the IRAS from taxing the non-resident individual on any part of his income derived from an employment exercised in Singapore, even though the employment may have been exercised in Singapore for more than 60 days during the calendar year (conditions apply).

Example 3

Michael is unmarried and a resident of the United States of America (USA), a non-treaty country. He worked in Singapore for five months in 2017. His Singapore employment income was $81,000. His tax liability for YA 2018 is as follows:

	$
15% flat rate basis	
Employment income	81,000
Tax @ 15%	12,150
Resident basis	
Employment income	81,000
Less: Earned income relief (assumed)	(1,000)
Chargeable income	80,000
Tax liability (Second Schedule, Pt A, Table 2 rates)	3,350

As tax payable under the resident basis is lower, Michael's tax payable will be $12,150.

Per diem allowance in Singapore

From 1 January 2016, the following tax treatment applies to employees who are based outside Singapore and travel to Singapore for business:

- the IRAS annually specifies an acceptable rate for *per diem* allowance in Singapore which will not be taxable in Singapore. If the *per diem* allowance exceeds the acceptable rate, only the excess amount will be taxable. This treatment mirrors the existing practice for Singapore-based employees who travel outside Singapore for business purposes, and
- allowances received for the purposes of subsistence (including the acceptable rate for *per diem*), travelling, conveyance or entertainment will not be taxable in Singapore.

The acceptable rate for *per diem* allowance in Singapore for 2017 is $141 per day.

The above tax treatment also applies to non-resident directors who travel into Singapore on or after 1 January 2016 for business purposes. See also ¶13-660.

Source: IRAS' website at www.iras.gov.sg.

¶13-140 Relief for non-resident SRS members

A non-resident SRS member is entitled to s 40C relief for the withdrawals he makes from his SRS account which are deemed to be income under s 10L. The effect of s 40C relief is that the amount of the non-resident's SRS withdrawals deemed income (the amount is 50%) is assessed:

- at the higher of 15% flat rate, or
- on the basis that he were resident.

Taxation of non-resident SRS member on resident basis

From YA 2018, in calculating the amount of tax payable on the basis that the non-resident SRS member were a resident, the cap of $80,000 on the total amount of personal reliefs will apply (s 40C(3A)). In order to claim this relief, the non-resident has to file his income tax return.

Withholding tax on income received by non-citizen non-resident SRS member

In the case of a non-citizen non-resident SRS member, the following amounts are subject to 22% withholding tax from YA 2017:

- 50% of certain SRS withdrawals deemed income to him (s 45E), and
- 50% of the total value of investments made using funds from his SRS account (s 45EA).

¶13-150 Relief for non-resident deriving income from activity as public entertainer and employee, etc

Relief under s 40D is available to a non-resident individual who derives income from two or more of the following sources (ie "relevant income"):

- income derived as a public entertainer which qualifies for s 40A relief
- Singapore employment income, and
- withdrawals from his SRS account.

The effect of s 40D relief is that:

- the proportionate tax on each of these types of income is reduced to the 15% tax rate, but
- the tax payable on Singapore employment income and the SRS withdrawals cannot be less than that payable by a resident individual under similar circumstances.

From YA 2018, in calculating the amount of tax payable on the basis that the non-resident individual were resident, the cap of $80,000 on the total amount of personal reliefs will apply (s 40D(3A)).

¶13-300 Deemed-source provisions

Section 12 deems the geographical source of the following income to be in Singapore:

- gains or profits from trading operations partly carried on by a non-resident person in Singapore (s 12(1))
- profits of non-resident operators of ships and aircraft arising from the outward shipment of passengers, mail, livestock and goods from Singapore (s 12(2))
- profits of non-resident persons in the business of cable or wireless undertakings where such profits arise from the transmission of messages in Singapore (s 12(3)) (see ¶13-850)
- income from employment exercised in Singapore regardless of whether such income is received in Singapore (s 12(4)) (see Chapter 5 at ¶5-110ff)
- income from employment exercised outside Singapore on behalf of the Government (s 12(5))
- interest and other related payments (s 12(6)) (see ¶13-610)
- royalties, know-how and technical service fees, management fees and rental income of movable property (s 12(7)) (see ¶13-615 to ¶13-650), and
- commission or other payments to a licensed international market agent for organising or conducting a casino marketing arrangement with a casino operator in Singapore (s 12(8)).

Section 12 is not itself a charging provision; s 10(1) is (see Chapter 3 at ¶3-100ff). The deemed-source provisions remove the uncertainty of applying the source rules based on case principles. They do not deem the nature of the payments falling within their ambit as income. The significance of a payment of income being deemed-sourced in Singapore is that the IRAS would then have the right to tax it under the first limb of the charging provision s 10(1) (see Chapter 3, ¶3-100).

Subject to certain conditions in s 12(6A) and 12(7A), certain kinds of income are treated as not deemed derived from Singapore under s 12(6) and 12(7).

Historical Note: Ministry of Finance Press Statement 21 December 1977

The Press Statement issued by the Ministry of Finance on 21 December 1977 was codified and expanded on in s 12(6A) and 12(7A). As s 12(6A) and 12(7A) took effect from 29 December 2009 (see further ¶13-610, ¶13-630 and ¶13-640), the 1977 Press Statement no longer applies. For completeness, it is reproduced below:

Ministry of Finance, 1977 Press Statement

"The *Income Tax Amendment Act 1977* which came into effect on 7 July 1977 introduced certain provisions which have the effect of frustrating tax avoidance schemes in siphoning off Singapore profits, particularly between associated companies in Singapore and outside

Singapore. However, some of these provisions have been given more than one possible interpretation, thus giving rise to doubt on the scope and amount of payment to non-residents subject to tax. For the purpose of clarification and ease of administration, where the following services are performed outside Singapore by persons outside Singapore for or on behalf of residents or permanent residents or permanent establishment in Singapore, or even between associated companies, and such transactions are at arm's length and not with intent of siphoning off Singapore income, the Commissioner of Inland Revenue has given the following rulings:

(a) Commission, fees or any other payments in connection with any arrangement, guarantee, management or service relating to any loan or indebtedness — s 12(6)(a) of the *Income Tax Act*.

Where the arrangement, management, guarantee or service is performed outside Singapore, the payments for such arrangement, guarantee, management or service are hereby treated as not covered by the provisions of s 12(6)(a).

(b) Any payment for rendering of assistance or service in connection with the application or use of scientific, technical, industrial or commercial knowledge or information — s 12(7)(b) of the *Income Tax Act*.

Where the assistance or service is performed outside Singapore, the payment for such assistance or service is hereby treated as not covered by the provisions of s 12(7)(b). This does not refer to royalty which has always been subject to tax even before the 1977 Income Tax Amendment.

(c) Any payment for the management or assistance in the management of any trade, business or profession — s 12(7)(c) of the *Income Tax Act*.

Reimbursement or allocation of administrative expenses incurred by Head Office outside Singapore and claimed by a branch in Singapore is governed by the provisions of s 14 as before. This also applies to reimbursement or allocation of expenses between associated companies. Both are not affected by the provisions of s 12(7)(c).

Payments to persons outside Singapore not associated to the payers in Singapore are hereby treated as not covered by the provisions of s 12(7)(c)."

Where income is deemed sourced in Singapore under s 12(6) (subject to s 12(6A)) and 12(7) (subject to s 12(7A)), the payer is required to withhold tax when making the payment (if non-exempt) to a non-resident person (s 45 and 45A).

¶13-400 Withholding tax system

Singapore has a withholding tax mechanism to ensure and facilitate the collection of tax payable from non-residents on certain kinds of Singapore-sourced income. In general terms, the obligation to withhold tax applies to payments of certain income (see Table 1), which are either sourced or deemed sourced in Singapore. The applicable tax rates for each payment of income (in the absence of any tax treaty or tax incentive that grants a tax exemption or lower tax rate) are also indicated.

Withholding tax applies to the payments listed in the table unless:

- the payment of income is tax exempt (under a tax treaty or domestic tax incentive), or
- the requirement to withhold tax has been waived.

Exempt income

Where the income is exempt, there is no tax liability on the income. As the withholding mechanism is only a method of collecting tax that is payable, withholding tax would not apply to exempt income.

Deadline for payment of tax withheld

Where tax has been withheld from payments made to a non-resident person:

- the IRAS must be notified immediately in writing of the deduction, and
- the amount withheld must be paid to the IRAS within the specified period (s 45(1) and 45(4)).

There are penalties for failure to withhold tax and for late payment of the tax withheld.

Where the payment of income to a non-resident person is on or after 1 July 2012, the tax withheld must be paid over to the IRAS by **the 15th day of the second month following** the date of payment to the non-resident.

The Comptroller of Income Tax (the "Comptroller") has the discretion to:

- allow banks and financial institutions to give notice and make payment of withholding tax within such period as is acceptable to him, and
- require any person to withhold and account for tax at a higher or lower tax rate (s 45(2)).

With effect from 29 December 2016, s 45(1C) and 45(1D) enable:

- the Minister for Finance to make rules to prescribe a different withholding tax rate from that set out in s 45 for any person or class of persons, and
- the Comptroller to allow any person or class of persons (besides banks and financial institutions):
  - to give him a notice of deduction of tax within a different period from that specified in s 45, and
  - to pay him the deducted tax within a different period from that specified in s 45.

The IRAS has clarified that:

- For a payment of income subject to final withholding tax of 10% or 15%, the deduction of tax would be based on the gross amount of payment.
- Where the tax on the payment is not a final tax, the deduction of tax would be based on the gross amount of payment made to the non-resident. However, where written permission has been obtained from the IRAS before payment is made, the deduction of tax could be based on:
  - a lower tax rate, or
  - a lower amount of payment.
- Where there is a dispute with the Comptroller as to whether payment to a non-resident is subject to withholding tax, the payer is still obliged to withhold tax on the payment pending the resolution of the dispute. Otherwise, the payer:
  - will be held accountable for any tax due, and
  - will be liable for penalties if the tax is not paid within the prescribed period.

Final tax versus non-final tax

At the outset, we have explained the terms "final tax" and "non-final tax" in Table 1.

Under the current tax rules:

- Tax that is subject to withholding at:
  - the normal corporate rate of 17% (for non-individuals), or
  - 22% from YA 2017 (for non-resident individuals)

  is **not a final tax**. This means that the non-resident recipient of the income may file a tax return with the IRAS to claim deduction for expenses wholly and exclusively incurred in the production of the income and claim a refund of the tax overpaid.

  In practice, however, where the income falls under a non-s 10(1)(a) source, eg director's fees (s 10(1)(b) income), deductions for expenses are rarely claimed and allowed.
- Tax that is subject to withholding at some other reduced rate such as 10% or 15% is a **final tax**. This means that the non-resident recipient of such income cannot file a tax return to claim deductions for expenses incurred (s 43(3), 43(3A) and 43(3B)).

  As an exception, proceeds derived by a non-resident real property trader from the sale of real property in Singapore are subject to withholding tax at 15% but this tax is non-final.

Withholding tax rates

Depending on the nature of the payment, the withholding tax rate applicable to a payment made to a non-resident could be:

- 10%, 15%, 17% or the rate specified under a tax treaty (for non-individuals)
- 10%, 15%, 22% from YA 2017 or a lower tax rate specified under a tax treaty (for individuals).

Table 1 shows that among the deemed-source provisions of s 12, only s 12(6) and 12(7) payments are subject to withholding tax in s 45 and 45A:

- 10% final withholding tax applies to:
  - royalties or other payments in one lump sum or otherwise for the use of or the right to use any movable property, and
  - payments for the use of or the right to use scientific, technical, industrial or commercial knowledge or information (ie know-how payments)
- 15% final withholding tax applies to:
  - interest, commissions, fees and any other payments in connection:
    - (i) with any loan or indebtedness, or
    - (ii) with any arrangement, management, guarantee or service relating to any loan or indebtedness, and
  - rent or other payments for the use of any movable property.

For the above final withholding tax rates of 10% or 15% to apply, the income:

- must not be derived from any TBP or vocation carried on or exercised by the non-resident person in Singapore, and
- must not be effectively connected with any PE of the non-resident person in Singapore (s 43(3)).

The non-final withholding tax rate of:

- 17% (for non-individuals), or
- 22% from YA 2017 (for non-resident individuals)

would apply to the following payments made in the basis period ending in 2009 and subsequent years:

- technical assistance fees (show-how payments), and
- management fees.

Non-resident directors' remuneration is subject to withholding tax at 22% from YA 2017 (s 45B).

Before the details on these and other payments listed in Table 1 are explained further in this chapter, the following relevant aspects which pertain generally to s 12(6) and 12(7) are first set out in turn:

- Circumstances in which income is deemed to have been paid, for withholding tax purposes.
- General tax incentive under s 13(4) for s 12(6) and 12(7) payments.
- Tax consequences of breach of condition imposed under s 13(4) incentive (s 45AA).

Income deemed to have been paid

Withholding tax applies not only to actual payments of the income made to a non-resident person but also to payments deemed to have been made.

A payment is deemed to have been made to a person if it is:

- reinvested
- accumulated
- capitalised
- carried to any reserve or credited to any account, or
- otherwise dealt with on behalf of that person (s 45(8)(b)).

Example 4

If a non-resident person instructs a Singapore resident company paying royalties to him to invest the amount in shares instead, the royalties will be **deemed** to have been **paid** to him even though he did not actually receive payment.

For withholding tax purposes, the **date of payment** is the **earliest** of the following dates (s 45(8)(b)):

- when the payment is due (based on the contract or agreement) ("liable to pay" in the language of s 45(1))
- the date of deemed payment, or
- the date of actual payment.

The IRAS has stated that:

- in the absence of a contract or an agreement, the date of invoice would be taken to be the date the payment is due, and
- in the case of director's fees, the date of payment is the date when the fees are voted and approved at the company's annual general meeting.

Example 5

On 15 September 2017, Tristan Accessories Pte Ltd, a Singapore resident company, obtained a loan of $2m from its USA parent company USCo. Under the loan agreement, the first payment of interest of $10,000 was due on 15 December 2017. Tristan made the actual payment only on 8 January 2018.

The USA does not have a comprehensive tax treaty with Singapore. Assume no tax incentive applied to the payment of interest.

Solution:

The "date of payment" of the interest was 15 December 2017.

Tristan was required to withhold tax at 15% (final) on the interest, ie $1,500, and remit the amount of $1,500 to the IRAS by 15 February 2018.

USCo would have received only the balance (net of 15% withholding tax) of $8,500.

General tax incentive for s 12(6) and 12(7) payments

A tax treaty may provide for tax exemption or reduction on income such as interest and royalties which falls within the scope of s 12(6) and 12(7) (for details, see the table of Tax Treaties in the Appendix to the book at Chapter 22, ¶22-000).

The following domestic tax provisions may also grant tax exemption or reduction for payments of income generally falling within s 12(6) and 12(7). Recall that withholding tax does not apply to exempt income, and that the reduced rates of withholding tax will apply (instead of those listed in Table 1) where an applicable treaty or incentive exists.

- *Exemption of tax on s 12(6) and 12(7) payments*

  The Minister has the power to grant full or partial tax exemption on any payment of income under s 12(6) and 12(7) if the payment is made for a purpose which will promote or enhance the economic or technological development of Singapore (s 13(4)). Exemption from tax is notified in the *Gazette* on a case-by-case basis. The scope of payments falling within this incentive therefore consists of:

  - interest
  - commissions, fees and basically other service-related payments in connection with a loan or indebtedness
  - royalties
  - know-how payments
  - technical assistance fees
  - management fees, and
  - rent for the use of movable property.

  Where a person has breached any condition imposed by the Minister for granting the s 13(4) incentive, the amount of tax that ought otherwise to have been withheld by him from payments made by him to a non-resident person is deemed to have been withheld from those payments and is a debt due from him to the Government and recoverable from him (s 45AA(1)). This rule applies from 20 December 2011.

Example 6

Section 13(4) tax exemption was granted on a payment of interest by a Singapore resident company, SingCo, to a non-resident lender, USCo, a person who is resident in a non-treaty country and has no business presence or other dealings in Singapore. SingCo had paid $100,000 interest to USCo without withholding any tax.

Assume, however, that not all the conditions for the tax exemption were complied with. Under s 45AA, the 15% final tax that ought to have been withheld and accounted for to the IRAS is deemed to have been deducted by SingCo from the payment of $100,000 and is a debt due from SingCo to the Government.

The tax deemed deducted by SingCo	= $100,000/0.85 × 15%
	= $17,647.06

- *Approved royalties, fees and development contributions (EEIA)*

  Under this incentive, the Minister may grant tax exemption or reduction for approved "royalties, fees and development contributions" if it is expedient in the public interest to do so. Such income includes royalties and technical assistance fees under s 12(7) (s 64 of the *Economic Expansion Incentives (Relief from Income Tax) Act (Cap 86)* (EEIA)).

Waiver of withholding tax

To reduce compliance costs for businesses, payers are no longer required to withhold tax on s 12(6) and 12(7) payments made on or after 21 February 2014 to PEs that are Singapore branches of foreign-incorporated companies not known to the payers to be resident in Singapore (s 45(9)(c), 45A(2E)).

These branches in Singapore:

- will continue to be assessed to tax on such payments that they receive, and
- will be required to declare such payments in their annual tax returns.

Historical Note: Position before 21 February 2014

Prior to 21 February 2014, there was a general waiver of withholding tax on s 12(6) payments made to the Singapore branch of a non-resident bank (see also ¶13-610). The information below pertains to non-bank companies only.

Prior to 21 February 2014, a Singapore branch of a non-resident company which was part of a substantial overseas group, could apply for a waiver of withholding tax for any of its income deemed sourced in Singapore under s 12(6) and 12(7) if the following conditions were satisfied:

(a) the branch was part of a substantial overseas group (as a guide, a group with turnover of at least US$50m per annum on a consolidated basis would be considered a substantial group)
(b) the branch had been carrying on business in Singapore for at least two years
(c) the branch had complied well with the taxation laws of Singapore
(d) the head office of the company undertook to pay any tax which might be unpaid arising from the waiver
(e) the branch provided a schedule of the names of the persons from which income to be covered by the waiver would be received

(f) the branch undertook to the Comptroller to:
  (i) report all payments on which withholding of tax would apply, if not for the waiver, as income in its accounts
  (ii) confirm that such income had been so reported when the tax computation was filed
  (iii) inform him should it subsequently fail to meet the condition in (a)
  (iv) inform him of any impending decision to cease operations in Singapore, and
(g) any approval granted for the waiver would be reviewed annually and might be withdrawn upon the breach of any condition.

Where the non-resident company could not meet the above conditions for the indefinite waiver, it could still apply for waiver on a case-by-case basis. The company might be required to provide some security, such as a banker's guarantee, to cover any potential liability to tax.

The waiver was extended to payments made under construction or service contracts to Singapore branches of non-resident companies.

The Singapore branch office of a non-resident company, which was not part of a substantial overseas group, could also apply for waiver of withholding tax on its interest income.

Once granted, the waiver would be valid indefinitely unless revoked by the Comptroller.

Accounting for withholding tax — e-filing from 1 July 2016

In line with the Government's direction for more cost-effective delivery of public services, electronic-filing of withholding tax has been made compulsory for filings made from 1 July 2016 and the Comptroller is authorised to exempt any person from compulsory e-filing under certain circumstances (s 8A, 45(1B), 45D(2A)).

Historical Note: Position up to 30 June 2016 — Form IR37

The description below relates to the position prior to this change.

Any person who withheld tax from interest, royalties, management fees, directors' remuneration or other payments paid to a non-resident person was required to complete and submit Form IR37 to the Comptroller together with the relevant amount of tax withheld. The following information was required to be provided:

- the particulars of the local payer
- the nature of payment (eg interest, royalties, directors' fees, charter fees, etc)
- the particulars of the non-resident payee, including country of residence
- the date of payment
- the period of payment (or deemed payment)
- the gross amount
- the rate of tax and the amount of tax deducted, and
- the amount of penalty (if any) for late payment of withholding tax to the Comptroller.

Penalties

With effect from 1 July 2012, the rules for late payment penalties are as follows:

- If the tax withheld is not paid by the 15th day of the second month following the date of payment, a 5% penalty on the amount of unpaid tax will be imposed (s 45(4)(a)).
- If the tax withheld is not paid within 30 days after the 15th day of the second month following the date of payment, an additional 1% penalty will be imposed for each completed month that the tax remains unpaid, subject to a maximum additional penalty of 15% of the amount of tax outstanding (s 45(4)(b)).

Example 7 illustrates the penalty regime.

Example 7

Company A paid interest to a non-resident person on 1 April 2018, the payment due date. Company A has to withhold tax and pay the amount of tax withheld to the IRAS on or before 15 June 2018. If payment is not made by 15 June 2018, a 5% penalty on the unpaid tax will be imposed.

If the tax withheld is not paid by 15 July 2018 (there are 30 days from 16 June 2018 to 16 July 2018), an additional 1% late payment penalty will be imposed on 16 July 2018, and thereafter for every completed month that the tax remains unpaid, subject to a maximum additional penalty of 15% of the amount of tax outstanding.

A person who fails to notify the Comptroller within the specified period that any amount of tax has been withheld (and not just the amount of tax required to be withheld) from a payment made to a non-resident is guilty of an offence (the clarification given by the underlined text was effected through the amendment of s 45(5) on 26 October 2017). On conviction, the person may be liable to:

- a penalty equal to three times the amount of tax withheld, and
- a fine not exceeding $10,000, or imprisonment for up to three years, or both (s 45(5)).

A payer who fails to withhold tax from any payment made to a non-resident person is liable to account to the Government for the amount which he has failed to withhold (s 45(3)).

The manager or principal officer of a company is answerable for all matters regarding withholding tax (s 45(8)).

INCOME SUBJECT TO WITHHOLDING TAX

¶13-610 Section 12(6) payments — interest, etc

Under s 12(6), the following payments are deemed derived from Singapore:

(a) any interest, commission, fee or any other payment in connection with any loan or indebtedness, or with any arrangement, management, guarantee or service relating to any loan or indebtedness which is:

(i) borne, directly or indirectly, by a person resident in Singapore or a PE in Singapore except in respect of any business carried on outside Singapore through a PE outside Singapore or any immovable property situated outside Singapore, or

(ii) deductible against any income accruing in or derived from Singapore, or

(b) any income derived from loans where the funds provided by such loans are brought into or used in Singapore.

(See also Chapter 6 at ¶6-220 and the *CH Pte Ltd* case summary therein.)

Where s 12(6A) applies, it ousts the application of the deemed-source provision of s 12(6) to the payment concerned. Section 12(6A) does not cover interest income. It distinguishes and sets out different conditions for two categories of payments:

- fees (except guarantee fees) relating to loan or indebtedness, and
- guarantee fees relating to loan or indebtedness.

Income not deemed to be sourced in Singapore under s 12(6A)

Fees (except guarantee fees) relating to loan or indebtedness: s 12(6A)(a)

Under s 12(6A)(a), any payment for any arrangement, management or service relating to any loan or indebtedness will not be deemed derived from Singapore if the arrangement, management or service is performed outside Singapore for or on behalf of a person resident in Singapore or a PE in Singapore by a non-resident person who:

(i) (if he is not an individual) is not incorporated, formed or registered in Singapore, and

(ii) in any event:

(A) does not, by himself or in association with others, carry on a business in Singapore and does not have a PE in Singapore, or

(B) carries on a business in Singapore (by himself or in association with others) or has a PE in Singapore, but the arrangement, management or service is not performed through that business carried on in Singapore or through that PE.

Guarantee fees relating to loan or indebtedness: s 12(6A)(b)

Under s 12(6A)(b), any payment for any guarantee relating to any loan or indebtedness is not deemed derived from Singapore if the guarantee is provided for or on behalf of a person resident in Singapore or a PE in Singapore by a guarantor who is a non-resident person who:

(i) (if he is not an individual) is not incorporated, formed or registered in Singapore, and

(ii) in any event:

(A) does not by himself or in association with others, carry on a business in Singapore and does not have a PE in Singapore, or

(B) carries on a business in Singapore (by himself or in association with others) or has a PE in Singapore, but the giving of the guarantee is not effectively connected with that business carried on in Singapore or that PE.

Withholding tax

The final withholding tax rate of 15% will apply to interest and related payments deemed sourced in Singapore under s 12(6) (subject to s 12(6A)) and made to a non-resident person if the income is:

- not derived by the non-resident from any TBP or vocation carried on in Singapore, and
- not effectively connected with any PE of the non-resident in Singapore (s 43(3)).

Where both the above conditions are not met, the non-final withholding tax rate of:

- 17% (for non-individuals), or
- 22% from YA 2017 (for non-resident individuals)

would apply, unless the IRAS has granted a waiver (in which case such income would be taxed by direct assessment, and the payer can pay the amount gross without withholding any tax).

PIONEER INDUSTRIES

¶19-210 General

Eligibility

An industry may qualify as a pioneer industry if the Minister considers that:

- it is not carried on in Singapore on a sufficient scale for Singapore's economic needs
- there are favourable prospects for development, and
- it is expedient in the public interest to do so.

This incentive is granted to companies only.

Sunset clause

No company may be approved as a pioneer enterprise on or after 1 January 2024.

Tax relief period

The tax relief period of a pioneer enterprise can be for a period up to 15 years starting from the production day (s 6). Profits derived from a pioneer trade or business during the tax relief period are exempt from tax (s 13). The production day is the day on or before which it is expected that the pioneer enterprise will produce the pioneer product in marketable quantities (s 5(3)(b)).

Pioneer certificate

A pioneer certificate is issued to a company that has been granted pioneer status. The certificate sets out the conditions under which the incentive is granted. These conditions include the production day.

In practice, as a condition for approval, all operating expenses incurred before the production day are to be treated as disallowable expenses and would not qualify as business losses to be carried forward.

Accounts

A pioneer enterprise is deemed to have permanently ceased its old trade or business at the end of its tax relief period and to have commenced a new trade or business on the day immediately following the end of its tax relief period (s 7(a) and 7(b)). The first set of accounts of its old trade or business has to be made up for a period of up to one year, beginning on:

- the production day of the pioneer product, or
- the earlier or earliest of the production days of the pioneer products if the pioneer certificate specifies two or more pioneer products.

Subsequent annual accounts are for corresponding one-year periods with the final accounts being for a period not exceeding one year, ending on the expiry date of its tax relief period (s 7(c)).

¶19-230 Separate trade and income adjustments

If a pioneer company derives its revenue from the sale of pioneer products which it manufactures in Singapore and also from selling other products (which may or may not be related to the pioneer product), the revenue from the latter trade or business may be considered non-pioneer income. Investment income is also taxable as non-pioneer income at the normal corporate tax rate.

Where a pioneer company carries on a separate (non-pioneer) trade or business, the following rules apply:

- Separate accounts must be maintained for the non-pioneer trade or business (s 8(1)). This is to enable the receipts and direct expenses of the two trades or businesses to be recorded accurately for tax purposes. Expenses common to both trades or businesses must be apportioned on some fair and reasonable basis.
- Where there is a loss from a non-pioneer trade or business, such loss has to be brought into the computation of the income of the pioneer enterprise unless the Comptroller is satisfied that the loss was not incurred to obtain a tax advantage (s 8(2)). Therefore, a tax loss arising from a non-pioneer trade or business would reduce the pioneer income of the pioneer enterprise unless the taxpayer can show that it did not incur the tax loss to reduce tax.

  The Comptroller may consider that a loss was not incurred to gain a tax advantage under the following circumstances:

  – if the loss was due to depressed sale prices arising from recession, poor market conditions, exceptionally strong competition and sub-standard products
  – if the loss was reasonable, direct expenses have been charged to both the pioneer and separate trades, and appropriate and reasonable bases have been used in apportioning indirect expenses between the trades, and
  – if the separate trade was already in a loss position before the commencement of the pioneer trade.

  (See IRAS e-Tax Guide "Pioneer Incentive: Tax Treatment of Gains and Losses from a Separate Trade" (2nd Ed), published on 29 August 2014.)

  The onus of proving that a loss was not incurred for a tax advantage is on the pioneer enterprise.

Example 1

	Non-pioneer $	*Pioneer* $
Adjusted profit/(loss)	(1,000)	900,000
Less: s 8(2) abatement	(1,000)	(1,000)
Exempt income	—	899,000

- Where the adjusted profit of the separate trade of a pioneer enterprise is less than 5% of the full sum receivable from the sale of goods or the provision of services, the statutory income from the separate trade is deemed to be 5% of the full sum receivable and the pioneer income would be abated accordingly (s 8(3)). The Comptroller may specify a rate less than 5%. In practice, the Economic Development Board (EDB) has been delegated the responsibility for processing applications for a lower percentage. The factors that the EDB would consider include:
  - the importance of the separate trade to the enterprise
  - the turnover of the separate trade
  - whether the separate trade is a new or established activity
  - past profit margins of the separate trade, and
  - whether the separate trade's profit margins follow market trends.

Example 2

YA 2019 tax computation

	Non-pioneer	*Pioneer*
	$	$
Sales	40,000	
Adjusted profit (for example)	1,700	90,000
Add/(less): s 8(3) abatement (5% of $40,000 = $2,000)	300	(300)
Deemed profit	2,000	89,700
Less: Capital allowances (CA)	(400)	(12,000)
	1,600	
Less: Exempt amount (s 43(6) of the *Income Tax Act*) (75% of $1,600)	(1,200)	
Chargeable income	400	
Exempt income		77,700

- Where a separate trade is, in the Comptroller's opinion, subordinate and incidental to the pioneer trade, the income or loss from the separate trade will be deemed to form part of the pioneer trade (s 8(4)).

¶19-240 Computation of exempt profits

In computing pioneer profits during the tax relief period, the general income tax rules apply after any adjustments that the Comptroller may make (see s 10 and the paragraphs below).

Medical expenses

An exception is medical expenses, where any excess of the specified percentage of employees' remuneration is deemed profits taxable at the normal corporate tax rate (s 14(6), *Income Tax Act*).

Unabsorbed losses and capital allowances

Special rules also apply to the unabsorbed losses and unabsorbed CA that a pioneer company may have when its tax relief period ends (s 15).

Capital allowances

In computing the pioneer profits of a company, it is mandatory to claim:

- land intensification allowances
- industrial building allowances, and
- CA on plant or machinery (s 10(2)).

Unabsorbed CA can be carried forward throughout the tax relief period and if any balance remains at the end of the tax relief period, it can be set off against the income of the company's new trade or business in accordance with the *Income Tax Act* (s 15(2)).

As an exception, CA will not be deducted when computing the exempt income of a pioneer company if:

- the company has incurred, or has undertaken to incur, capital expenditure of not less than $150m
- more than 50% of the paid up capital is held by persons permanently resident in Singapore, and
- the Minister has approved the capital expenditure as promoting or enhancing Singapore's economic or technological development (s 10(5)).

Where CA are not taken into account, the assets acquired by the pioneer company during its tax relief period will be deemed to have been acquired on the day immediately following the day the tax relief period ends (s 10(5)).

Losses

Where a pioneer company incurs losses, such losses can be set off as provided for in s 37(3) of the *Income Tax Act* but only against its pioneer income. However, any losses which remain unabsorbed at the end of the tax relief period can be set off against the profit of the company's new trade or business subject to the substantial shareholdings test (s 15(1)).

Comptroller's adjustments

If any sums payable to a pioneer enterprise in a tax relief period might reasonably and properly have been expected to be payable after the end of the tax relief period, the Comptroller may treat such sums as payable in respect of the new trade or business (s 9(a)). Conversely, if any expenses incurred within one year after the end of the tax relief period might reasonably and properly have been expected to be incurred during the tax relief period, the Comptroller may treat such expenses as having been incurred for the old trade or business (s 9(b)). These provisions are intended to prevent companies from inflating their pioneer profits and reducing their taxable income.

Apportionment of CA upon expiry of tax relief

If the tax relief period of a pioneer enterprise expires during the basis period of a YA, the allowances for that YA are to be computed as if the old trade or business has not ceased. The amount of allowances computed is to be apportioned in a reasonable manner between the old trade and the new trade (s 10(3)).

The old trade of a pioneer enterprise is the trade that was carried on by a pioneer enterprise before its tax relief period expires. The new trade refers to the trade carried on by the enterprise after its tax relief period expires (s 7(a) and 7(b)).

The CA should be apportioned as set out below:

- Capital expenditure incurred before the expiry of the tax relief period:

  Initial allowances, under s 16 and 19 of the *Income Tax Act*, on capital expenditure incurred before the date of expiry of the tax relief period, are to be allocated to the old trade.

- Assets in use at the end of both the tax relief period and the basis period:

  Annual allowances for these assets under s 16, 19 and 19A of the *Income Tax Act* are to be apportioned to the old trade and the new trade as follows:

$$\text{Amount to be apportioned to old trade} = \frac{\text{Number of days in the basis period relating to the old trade or business}}{\text{Number of days in the basis period}} \times \text{Annual allowances}$$

$$\text{Amount to be apportioned to new trade} = \frac{\text{Number of days in the basis period relating to the new trade or business}}{\text{Number of days in the basis period}} \times \text{Annual allowances}$$

- Capital expenditure incurred after the expiry of the tax relief period:

  Initial and annual allowances, under s 16, 19 and 19A of the *Income Tax Act*, on capital expenditure incurred after the expiry of the tax relief period, are to be allocated to the new trade.

- Assets disposed of before the expiry of the tax relief period:

  Balancing allowances or charges on assets disposed of before the expiry of the tax relief period are to be allocated to the old trade.

- Assets disposed of after the expiry of the tax relief period:

  Balancing allowances or charges on assets disposed of after the expiry of the tax relief period are to be allocated to the new trade.

(See IRAS e-Tax Guide "Pioneer Incentive: Capital Allowances Upon Expiry of Tax Relief Period" (2nd Ed), published on 29 August 2014.)

Unabsorbed CA brought forward from the basis period preceding the basis period during which the tax relief expires are to be allocated to the old trade or business of the enterprise.

¶19-250 Other provisions

Recovery of tax

The Comptroller may recover tax if any amount of income of a pioneer enterprise which was exempted from tax is subsequently not exempt:

- because of the Comptroller's direction under s 9, or
- because the pioneer status was revoked (s 14(1)).

The Comptroller may raise an assessment or additional assessment on the pioneer enterprise to counteract any profit obtained from any such amount. Where there is no fraud, the statutory limitation is:

- four years for YA 2008 and subsequent YAs (s 74(1), *Income Tax Act*), and
- six years for YA 2007 and before.

Statement of income

From YA 2009, a statement showing the amount of income in respect of its old trade or business has to be included in any notice of assessment for any YA served on the pioneer enterprise under the *Income Tax Act* (s 12). Where such a statement has become final and conclusive, the amount of the income shown in the statement would not form part of the statutory income of the pioneer enterprise and would be exempt from tax (s 13(1)).

The Comptroller may, before such a statement has become final and conclusive, declare that a specified amount of the income is not in dispute and is exempt from tax (s 13(2)).

PIONEER SERVICE COMPANIES

¶19-300 Pioneer service companies

A company that is engaged in any "qualifying activity" may be approved as a pioneer service company. The income from a qualifying activity of a pioneer service company is tax exempt during its tax relief period.

Tax relief period

The tax relief period of a pioneer service company can be for five to 15 years (s 19 read with s 6). The tax relief period begins on the commencement day in respect of the qualifying activity.

Qualifying activities

"Qualifying activities" include the following:

- engineering and technical services including laboratory, consultancy, and R&D activities

  R&D activities were removed from the scope of a pioneer service company for new incentive awards approved on or after 1 July 2017. Existing incentive recipients will continue to have such income covered under their existing incentive awards until 30 June 2021.

  As announced in the 2017 Budget, to encourage the use of IPs arising from a taxpayer's R&D activities, a new IP Regime has been introduced to encourage the exploitation of IP arising from R&D activities of a taxpayer.

  IP income received on or after 1 July 2017 is incentivised under a new IP Regime called IP Development Incentive (IDI). The IDI took effect on 1 July 2017 and is administered by the EDB
- computer-based information and other computer-related services
- development or production of any industrial design, and
- any other prescribed services or activities (s 16).

Under the Economic Expansion Incentives (Relief from Income Tax) (Qualifying Activity) Regulations, prescribed services and activities are:

- services and activities which relate to the provision of entertainment, leisure and recreation
- publishing services
- services which relate to the provision of education
- medical services
- services and activities which relate to agricultural technology
- services and activities which relate to the provision of automated warehousing facilities
- services which relate to the organisation or management of exhibitions and conferences (deleted on 2 March 2017)
- financial services
- business consultancy, management and professional services
- services and activities which relate to countertrade including barter, counterpurchase, and compensation or buyback (deleted on 2 March 2017)
- services and activities which relate to international trade
- venture capital fund activity (withdrawn as a prescribed qualifying activity from 1 April 2015)

  Venture capital is no longer considered to be a pioneering activity in Singapore and venture capital fund management has been withdrawn as a prescribed qualifying activity of a pioneer service company from 1 April 2015 (2015 Budget announcement). However, a company already awarded with a pioneer certificate for venture capital fund management will not be affected by this withdrawal
- operation or management of any mass rapid transit system (deleted on 2 March 2017)
- services provided by an auction house, and
- maintaining and operating a private museum (deleted on 2 March 2017).

INVESTMENT ALLOWANCES

¶19-410 General

Eligibility

A company may apply for IA in respect of the fixed capital expenditure for the following projects (s 67(1)):

- the manufacture or increased manufacture of any product
- the provision of specialised engineering or technical services
- R&D
- construction operations
- reducing the consumption of water
- in relation to any qualifying activity as defined in s 16
- the promotion of the tourist industry (other than a hotel) in Singapore
- the operation of any space satellite

- the provision of maintenance, repairs and overhaul services to any aircraft (this scheme was assessed to be no longer relevant and was not extended after 31 March 2015), and
- for improving energy efficiency (approval was granted for an initial five-year period from 1 April 2010 to 31 March 2015. The IA scheme for energy efficiency projects (IA-EE scheme) was combined with the IA-EE for Green Data Centres scheme into one scheme known as the "Investment Allowance — Energy Efficiency scheme" from 1 March 2015. The scheme has been extended till 31 March 2021 and is administered solely by the EDB).

Definitions

"Construction operations" include the construction, alteration, repair, extension or demolition of buildings and structures and of any works forming, or to form, part of any land.

A "space satellite" means an apparatus placed in orbit relative to the earth for any economic, scientific or technological purpose.

"Fixed capital expenditure" refers to capital expenditure incurred on the following items that are used for carrying out the approved projects (s 66(1)):

- factory building (excluding land) in Singapore, including a building or structure specially designed for carrying out the project under s 67(1)(b), 67(1)(c), 67(1)(d), 67(1)(f) or 67(1)(g)
- the acquisition of any know-how or patent rights (see below), and
- any new productive equipment and any approved second-hand productive equipment to be used in Singapore (see below). In relation to any project for the operation of space satellite and for aircraft maintenance, repairs and overhaul services, fixed capital expenditure would include any approved productive equipment to be used outside Singapore.

Note that from YA 2011, IA will not be granted for any amount of fixed capital expenditure incurred on the acquisition of any:

- productive equipment
- know-how, or
- patent rights

that qualify for:

- enhanced CA (s 19A(2A) or s 19A(2B), *Income Tax Act*), or
- enhanced writing-down allowances (s 19B(1A) or s 19B(1B), *Income Tax Act*)

under the Productivity and Innovation Credit (PIC) scheme (s 74A).

A company will not be deemed to have incurred fixed capital expenditure unless:

- in the case of any factory building or productive equipment to be constructed or installed on site, the expenditure is attributable to payment against work done in the construction of the building or the construction or installation of the productive equipment
- in the case of any productive equipment, other than those for a space satellite project or for aircraft maintenance, repairs and overhaul services, the company has received delivery of the equipment in Singapore, and
- in the case of any productive equipment for a space satellite project or for aircraft maintenance, repairs and overhaul services, the company has received delivery of the equipment (s 66(2)).

Exclusions

Investment allowances may not be given to a company for an approved project if the project gives rise to income which is (s 69(2)):

- exempt from tax under the *Income Tax Act* or the EEIA (other than the IA scheme under Pt X), and
- taxed at the concessionary rate of tax under the post-pioneer incentive and the DEI.

Nevertheless, should any fixed capital expenditure be incurred on or after 1 January 1996 for an approved project for reducing water consumption which gives rise to exempt or concessionary income, IA may be granted if the Minister is satisfied that it is expedient in the public interest to do so (s 69(6)). In such instance, the allowance is to be credited to the normal IA account and is allowed to be set off against the company's chargeable income taxed at the normal tax rate.

Tax relief

Under the IA scheme, a company is granted an IA based on an approved percentage of the fixed capital expenditure incurred on plant, machinery and factory building for an approved project. The percentage will not exceed 100% (s 68(1)).

The IA is to be set off against chargeable income derived from that project and is given in addition to the normal CA. Unlike unabsorbed CA, unutilised IA can be carried forward indefinitely for set-off against the chargeable income in future years. The substantial shareholders' and the "same trade" tests do not apply.

Qualifying period

The fixed capital expenditure must be incurred within the qualifying period of up to five years to be eligible for IA. Where the specified item is acquired under a hire-purchase agreement made on or after 15 February 2007, the qualifying period is extended up to eight years. The qualifying period begins on the "investment day", the date from which the company qualifies for the IA (s 66(1)).

Certificate for investment allowances

The approval for IA is given in a certificate issued by the EDB. This certificate gives full details of:

- the company
- the project
- the product, and
- the conditions for approval.

Some of the conditions relate to the:

- investment day
- qualifying period
- specified percentage, and
- qualifying fixed capital expenditure.

Expenditure on submarine cable systems — 20 February 2018 to 31 December 2023

As announced in the 2018 Budget, to strengthen Singapore's position as a leading digital connectivity hub, the IA scheme will be extended to capital expenditure incurred on newly-constructed strategic submarine cable systems landing in Singapore subject to qualifying conditions.

All other existing conditions of the IA apply except for the following which will be permitted for qualifying investment in submarine cable systems landing in Singapore:

- the submarine cable systems can be used outside Singapore, and
- the submarine cable systems on which IA has been granted may be leased out under the indefeasible rights of use arrangements.

This change will take effect for capital expenditure incurred between 20 February 2018 and 31 December 2023, both dates inclusive.

¶19-420 Crediting of investment allowances

Investment allowances which have been set off against chargeable income are required to be credited to separate IA accounts according to the tax rates applicable to the income arising from the approved projects.

- *Normal and concessionary IA accounts*
  - Where an IA is given for an approved project from which only normal income is derived, the IA is required to be credited to an account called a "normal investment allowance account" (NIAA) (s 69(3)).
  - Where an IA is given for an approved project from which concessionary income is derived, the IA is required to be credited to an account called a "concessionary investment allowance account" (CIAA) (s 69(4)).

  "Normal income" means income subject to tax at the normal rate of tax. "Concessionary income" means income which is subject to tax at a concessionary rate of tax under certain provisions of the Act (s 66(1)).

  Where a company derives both normal and concessionary income from a project, the Minister or a person whom he appoints will decide which account the IA is to be wholly credited (s 69(5)).

- *Change from normal income to concessionary income*

  Notwithstanding s 71, as from the relevant date, where the income derived from an approved project is subject to tax as concessionary income instead of normal income, the following applies:

  (a) Subject to (d), any balance in the NIAA will only be used for deduction against the company's normal income for the transitional year.

  (b) Any IA in respect of fixed capital expenditure incurred before the date of change will be credited to the NIAA.

  (c) Any IA in respect of fixed capital expenditure incurred on or after the date of change will be credited to the CIAA.

  (d) The NIAA for the transitional year will be debited with the amount of normal income for the transitional year not exceeding the credit in the NIAA; and any remaining balance in the NIAA will be transferred to the CIAA for use against the concessionary income of the company for the transitional year and future YAs (s 69(7)).

- *Change from concessionary income to normal income*

  Notwithstanding s 71, as from the relevant date, where the income of a company which is derived from an approved project is subject to tax as normal income instead of as concessionary income, the following applies:

  (a) Subject to (d), any balance in the CIAA at the end of the basis period for the YA before the transitional year will only be used for deduction against the company's concessionary income for the transitional year.

  (b) Any IA in respect of fixed capital expenditure incurred before the date of change will be credited to the CIAA.

  (c) Any IA in respect of fixed capital expenditure incurred on or after the date of change will be credited to the NIAA.

  (d) The CIAA for the transitional year shall be debited with the amount of concessionary income for the transitional year not exceeding the credit in the CIAA; and any remaining balance in the CIAA will be transferred to the NIAA for use against the normal income of the company for the transitional year and future YAs (s 69(8)).

The "relevant date" is the date in the basis period relating to any transitional year on which the income of an approved project is subject to tax as concessionary income instead of as normal income, or vice versa. The "transitional year" is the YA relating to the basis period in which the income of any approved project is from the relevant date subject to tax as concessionary income instead of as normal income, or vice versa.

- *Where company permanently ceases to derive concessionary income*

  Notwithstanding s 71(4), where the Comptroller is satisfied that a company has ceased to derive any concessionary income in the basis period for any YA:

  (a) the CIAA will be debited with the amount of concessionary income of the company for that YA not exceeding the credit in that account

  (b) any remaining balance in the CIAA will be debited from that account, and

  (c) an adjusted amount of any remaining balance referred to in (b) will be credited to the NIAA for use against the normal income of the company for that YA and subsequent YAs (s 69(9)).

¶19-430 Exemptions

Where for any YA, an NIAA of a company is in credit and the company has for that YA any normal income:

- an amount of the normal income, not exceeding the credit in the NIAA, will be exempt and the NIAA will be debited with such amount, and
- any remaining balance in the NIAA will be carried forward for set-off against the normal income in future YAs (s 71(1)).

However, a company may elect in any YA to set off any outstanding allowances in the NIAA against its concessionary income. The election has to be made when an income return is lodged (s 71(2) and 71(3)).

Where, for any YA, a CIAA of a company is in credit and the company has for that YA any concessionary income:

- an amount of the concessionary income, not exceeding the credit in the CIAA, will be exempt and the CIAA will be debited with such amount, and
- any remaining balance in the CIAA will be carried forward for set-off against the concessionary income in future YAs (s 71(4)).

Any amount of normal income of a company debited from the NIAA or any amount of concessionary income of a company debited from the CIAA is exempt from tax (s 71(5)).

¶19-440 Prohibitions on sale, lease or disposal of assets

During its qualifying period or within two years after the end of its qualifying period, a company is not permitted to sell, lease or otherwise dispose of any asset which has qualified for IA without the written approval of the Minister (s 70(1)). Otherwise, the total amount of the IA given for that asset may be recovered from the company by deducting the amounts which have previously been credited to the NIAA or CIAA. If the amount in the relevant account is not sufficient to give full effect to the recovery, an assessment or additional assessment may be raised on the company or any of its shareholders to recover the amount. The Minister may, however, waive wholly or partly the recovery of the IA (s 70(2) and 70(3)).

DEVELOPMENT AND EXPANSION INCENTIVE

¶19-500 Development and expansion incentive

The DEI applies not only to companies which have previously enjoyed pioneer status but also to companies which have not.

Any company engaged in a "qualifying activity" may be approved as a "development and expansion company" (s 19J(1)).

Qualifying activity

A "qualifying activity" means any of the following:

- the manufacturing or increased manufacturing of any product from any industry that would be of economic benefit to Singapore
- any qualifying activity as defined in s 16 (see ¶19-300 above), or

  R&D activities were removed from the scope of a DEI company for new incentive awards approved on or after 1 July 2017. Existing incentive recipients will continue to have such income covered under their existing incentive awards until 30 June 2021.

  As announced in the 2017 Budget, to encourage the use of IPs arising from a taxpayer's R&D activities, a new IP Regime has been introduced to encourage the exploitation of IP arising from R&D activities of a taxpayer.

  IP income received on or after 1 July 2017 is incentivised under a new IP Regime called IDI. The IDI took effect on 1 July 2017 and is administered by the EDB
- other services or activities as may be prescribed (s 19I).

Prescribed services and activities are those relating to:

- logistics
- freight forwarding, and
- shipping-related support services falling outside the scope of s 43ZF of the *Income Tax Act*.

The DEI scheme has been extended to cover income derived from the provision of international legal services from 1 April 2010 to 31 March 2020 (both dates inclusive) (s 19KA). This is to encourage law practices to do more international legal work. The incentive is available to law practices registered in Singapore:

- as a company, or
- as a branch of a foreign company.

Concessionary tax rate

Approved law practices will be subject to tax at a concessionary rate of 10% on "expansion income" from qualifying international legal services for a non-extendable period of five years.

A DEI company:

- that is approved on or after 29 February 2012, or
- that has been granted an extension of its tax relief period or periods for any qualifying activity or activities on or before 29 February 2012

is taxed at a reduced rate of not less than 5% on "expansion income" derived by it during its tax relief period from the qualifying activities.

Tax relief period

The initial tax relief period may be granted for a period not exceeding 10 years. The tax relief period may be extended for up to five years at a time, subject to a maximum total period of 20 years (s 19K(3)). For a DEI company which engages in one or more qualifying activities and oversees, manages or controls the conduct of any activity on a regional or global basis, when applying for an extension of the tax relief period between 18 February 2008 and 17 February 2018 (both dates inclusive), the tax relief period may be extended for a period not exceeding 10 years at any one time, but the total relief period shall not exceed in the aggregate 40 years (s 19K(3A) to 19K(3D)). On extension of the tax relief period from the 11th, 16th, 21st or 31st year, the reduced rate shall not be less than (0.5 + A)%, where A is the concessionary rate of tax applicable to the company's expansion income that is derived by it immediately before the commencement of the 11th, 16th, 21st or 31st year (s 19J(5E)).

Expansion income

The "expansion income" of a development and expansion company is the income from the qualifying activities which exceeds its "average corresponding income". The company's "average corresponding income" is determined by taking 1/3 of the total of the corresponding income from such qualifying activities for the three years immediately preceding the commencement day. The Minister may specify the amount of the "average corresponding income" (s 19J(6) to 19J(8)).

EXPORT OF SERVICES INCENTIVE

¶19-600 Export of services

Historical Note: Prior to 14 January 2011

The export of services incentive has been repealed by the *Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act 2010*, which came into operation on 14 January 2011.

Up to 13 January 2011, a company or firm engaged in qualifying services could be approved as an:

- export service company, or
- export service firm (s 44B(1) (repealed)).

Tax relief period

The initial tax relief period of an export service company or firm began on the commencement day and continued for a period not exceeding 10 years. The tax relief period could be extended for further periods, not exceeding five years at any one time, but the total period could not exceed 20 years (s 44C (repealed)).

Qualifying services

"Qualifying services" referred to any of the following services undertaken with respect to overseas projects for persons who were neither residents of, nor permanent establishments (PEs) in, Singapore (s 44A (repealed)):

- technical services, including construction, distribution, design and engineering services
- consultancy, management, supervisory or advisory services relating to any technical matter or to any trade or business
- fabrication of machinery and equipment and procurement of materials, components and equipment
- data processing, programming, computer software development, telecommunications and other computer services
- professional services including accounting, legal, medical and architectural services
- educational and training services, and
- other prescribed services.

Computation of profits

The income of an export service company or firm in respect of its qualifying services was computed as follows (s 44E(1) (repealed)):

(a) Income from sources other than the qualifying services was excluded and separately assessed.

(b) In computing the income derived from the qualifying services, the following were deducted:

(i) all direct costs and expenses incurred in respect of the qualifying services, and

(ii) all indirect expenses which were reasonably and properly attributable to the qualifying services.

(c) CA which were attributable to income derived from the qualifying services during the tax relief period were mandatory.

(d) For the purposes of (b)(ii) and (c), the amounts attributable to the qualifying services were determined on a basis that the Comptroller deemed reasonable and proper.

The excess of the income ascertained under s 44E(1) (repealed), over a base amount of income determined by the Minister, qualified for tax relief (s 44E(2) (repealed)). Subject to the Comptroller's powers of recovery of tax, 90% of the amount of the qualifying income was exempt from tax.

Example 3

A company was granted an export service certificate. The tax relief period began on 1 January 2008. The base export profit level for its overseas profit was $40,000. CA for YA 2010 was $36,000. Other details for the year ended 31 December 2009 are given below.

	$
Gross revenue	
– Local services	900,000
– Qualifying export services	300,000
Adjusted profits before CA	1,100,000

The exempt income and chargeable income were determined as follows:

Calculation of exempt income

	$
Adjusted qualifying profits (3/12 × $1,100,000)	275,000
Less: Attributable CA (3/12 × $36,000)	(9,000)
	266,000
Less: Base amount	(40,000)
Adjusted qualifying income	226,000
Exempt income = 90% thereof	203,400

Tax computation for YA 2010

	$	$
Adjusted profits		1,100,000
Less: CA		(36,000)
		1,064,000
Less: Exempt income (as above)		(203,400)
		860,600
Less: Exempt amount:		
75% of first $10,000	(7,500)	
50% of next $290,000	(145,000)	(152,500)
Chargeable income		708,100
Tax @ 17%		120,377

Chapter 19

OTHER INCENTIVES

¶19-700 Foreign loans for productive equipment

Where a company engaged in any industry wants to raise a loan from a non-resident person for the purchase of productive equipment for its trade or business, it may apply for that loan to be an approved foreign loan.

Tax benefits

Under the approved foreign loan incentive, the loan interest is either:

- exempt, or
- taxable at a reduced rate.

The borrower will therefore:

- not need to withhold any tax, or
- only need to withhold tax at a lower rate (s 59(1)).

Qualifying conditions

Prior to 24 February 2015, the loan must have been for a minimum amount of $200,000.

From 24 February 2015, the loan must be for a minimum amount of $20m but the Minister may approve an application for a loan of a lesser amount (s 57(1) and 57(2)).

The productive equipment purchased with the loan cannot be sold, transferred, or otherwise disposed of without the Minister's approval, unless the loan has been fully repaid (s 58). If the company contravenes s 58 or any of the conditions imposed for the approval of the foreign loan, the tax which would have been required to be withheld by the company from the interest it paid to the foreign lender will be recoverable from the company (s 59(2)).

Sunset clause

A review date of 31 December 2023 has been legislated for this incentive (s 57(6)).

¶19-720 Royalties, fees and development contributions

A company engaged in any industry which wants to enter into an agreement or arrangement with a non-resident person, under which:

- royalties
- technical assistance fees, or
- contributions to R&D costs

are payable to the non-resident person, may apply for those payments to be approved royalties, fees or contributions (s 61).

The term "royalties or technical assistance fees" includes any royalties, rentals or any other consideration for the right to use copyrights, scientific works, patents, designs, plans, secret processes, formulae, trademarks, licenses or any other property of a similar nature (s 3). Fees paid to an individual for professional services rendered in Singapore are excluded.

Tax benefits

Approved royalties, fees and development contributions are either:

- exempt from tax, or
- taxable at a reduced rate.

Where the tax payable on approved royalties, fees or contributions is at a reduced rate and the Comptroller is satisfied that the payments have either wholly or partly been expended in the acquisition of ordinary share capital in the company from which these payments were received, the amount of income expended will be exempt (s 65).

Cessation of payments before expiry of agreement

Where any approved royalties, fees or contributions payable by the company cease to be payable before the period of agreement expires, the company is required to notify the Minister within 30 days from the date they cease to be payable (s 62(1)).

Changes in terms of agreement

A company that has been granted the incentive may not amend or otherwise vary the terms of the agreement unless the Minister approves. However, if the consideration remains the same and the change relates only to reduced amounts of royalties, fees or contributions payable, the company need only to notify the Minister within 30 days

from the date on which the amount is reduced (s 62(2)). If a company contravenes s 62(2) or any condition set for the approval, the withholding tax that would have been payable if no relief had been granted will be recoverable from the company (s 64(2)).

Sunset clause

A review date of 31 December 2023 has been legislated for this incentive (s 61(4)).

¶19-730 Overseas Enterprise Incentive

Historical Note: Prior to 25 February 2013

The Overseas Enterprise Incentive has been withdrawn with effect from 25 February 2013. With broad-based changes to the domestic regime for foreign-sourced income, this incentive is no longer relevant.

Prior to 25 February 2013, a company incorporated and resident in Singapore which desired to expand its business by investing in an overseas company or carrying out a qualifying activity could apply to be approved as an overseas enterprise (s 97I(1) (repealed)).

Qualifying activity

"Qualifying activity" referred to any of the following activities in an overseas project:

- manufacturing activities or services
- infrastructure development and management
- tourism development and management
- technical services including construction, distribution, design and engineering services
- consultancy, management, supervisory or advisory services relating to any technical matter or to any trade or business
- fabrication of machinery and equipment and procurement of materials, components and equipment
- data processing, programming, computer software development, telecommunications and other computer services
- professional services including accounting, legal, medical and architectural services
- educational and training services, and
- any other prescribed activities or services.

Qualifying income

"Qualifying income" referred to:

- dividends received from any qualifying investment, specified in the certificate of approval under s 97I(2) (repealed), in any overseas company to the extent that the Comptroller was satisfied that such dividends were paid out of income of the overseas company derived from any qualifying activity, and
- income derived from Singapore or received in Singapore from outside Singapore from any qualifying activity.

Qualifying overseas enterprise

An "overseas enterprise" was required to be a company at least 50% of whose paid-up capital was beneficially owned by citizens or permanent residents of Singapore:

- throughout the period during which it held shares in an overseas company (in the case of dividends received from qualifying investments in that overseas company), or
- throughout the period during which it carried on any qualifying activity (in the case of income derived from that qualifying activity),

unless the Minister otherwise decided.

Tax relief period

An overseas enterprise was exempt from tax on its "qualifying income" for a total period of up to 10 years, beginning on the commencement day (s 97J) (repealed).

Computation of qualifying income

Qualifying income and other income were assessed separately (s 97M(a)) (repealed). The Comptroller was empowered to adjust income and expenses to prevent manipulation of accounts (s 97L) (repealed). The qualifying income was determined based on the general income tax rules. In particular, the following amounts were required to be deducted in calculating the qualifying income:

- all direct costs and expenses incurred in respect of that qualifying income
- all indirect costs and expenses which were reasonably and properly attributable to that qualifying income
- allowable donations, and
- CA attributable to the qualifying income (mandatory).

During the tax relief period, losses from the qualifying activity, unabsorbed CA and unabsorbed donations:

- were allowed to be carried forward for set-off against future qualifying income only, and
- were not allowed to be transferred to another company in the same group under the group relief rules.

At the expiry of the tax relief period, any unabsorbed losses and allowances were available for set off against other income subject to the substantial shareholdings test (s 97M(d), 97M(f) to 97M(h) (repealed)).

Indirect expenses and CA were required to be allocated to the qualifying income on a reasonable and proper basis (s 97M(e) (repealed)).

¶19-740 Enterprise Investment Incentive

Historical Note: Prior to 1 September 2009

The enterprise investment incentive has been repealed by the *Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act 2016*, which came into operation on 19 April 2016.

This incentive was intended to facilitate Singapore companies engaged in innovative and high growth activities with substantial developmental contents relating to any product, process or service in gaining access to venture capital. An investor who held qualifying shares in a start-up company could qualify for a deduction for any loss incurred from the sale of qualifying shares in, or from the liquidation of, the start-up company (s 97V(1)) (repealed).

A company incorporated in Singapore and not listed on the Singapore Exchange (SGX) or an overseas stock exchange could apply for approval as a start-up company if it:

- had a paid-up capital of at least $10,000, and
- was solely or primarily engaged in Singapore in innovative and high growth activities with substantial developmental contents in relation to any product, process or service (s 97T(1)) (repealed).

Tax relief period

The Minister would approve the application and award the company the start-up company status for a period of up to five years if he was satisfied that the activities of the company were in an area of high growth potential and would enhance the economic development of Singapore.

Sunset clause

No approval will be given on or after 1 September 2009 (s 97T(2) and 97T(3)) (repealed).

Qualifying conditions

An eligible investor in a start-up company could qualify for a deduction for any loss incurred under s 97V(1) (repealed) against its statutory income as if the loss were its trade or business loss. To be qualifying shares for this purpose, the following conditions applied:

- the shares were not shares of a preferential nature

- the purchase price of the shares allotted to the investor was not less than $1,000 at any one time
- the shares were not acquired under a share option or share award scheme
- the shares were not acquired through a conversion of any loan or debt securities
- the shares were paid for in cash, and
- at the time the shares were allotted to the investor, the total amount paid to the company for all qualifying shares by all eligible investors had not in the aggregate exceeded $3m (s 97U) (repealed).

A deduction would be denied if:

- the shares in respect of which the loss was incurred were held by an eligible investor for a period of less than one year from the date of allotment of the shares, unless the loss arose as a result of the liquidation of the start-up company, or
- the sale of the shares or liquidation occurred after six years from the date of allotment of the shares (s 97V(2)) (repealed).

Gains from sale of qualifying shares or liquidation of start-ups

Where an eligible investor made a gain from the sale of any qualifying shares in, or from the liquidation of, a start-up company and where any loss in relation to that start-up company had previously been allowed as a deduction to the eligible investor under s 97V (repealed), the gain would be deemed to be income of the eligible investor insofar as it was not taxable as a revenue or trading receipt (s 97V(3)) (repealed). However:

- no gain would be deemed to be income unless the total amount of losses allowed for previous YAs exceeded the total amount of the gains deemed to be income for previous YAs
- the amount of the gain chargeable to tax would not exceed the excess of the total amount of losses allowed for previous YAs over the total amount of gains deemed to be income for previous YAs, and
- the losses and gains referred to in s 97V(2)(a) (repealed) and 97V(2)(b) (repealed) would be disregarded (s 97V(4)) (repealed).

Ascertaining the loss or gain on disposal of qualifying shares of start-ups

The loss (gain) on disposal of the qualifying shares in a start-up company was determined to be the excess (deficit) of the purchase price of the qualifying shares over the greater of:

- the sale proceeds, or
- the value of the net asset backing of the start-up company as determined by the Comptroller at the date of sale of such shares.

In the case of the liquidation of a start-up company, the loss (gain) was the excess (deficit) of the purchase price of the qualifying shares over the liquidation proceeds (s 97V(5) and 97V(6)) (repealed).

¶19-750 Integrated industrial capital allowances

Historical Note: Prior to 17 February 2012

The IICA incentive has been withdrawn following the introduction of the IIA scheme on 17 February 2012. The changes were effected by the *Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act 2013*.

Where a company incorporated and resident in Singapore proposed to carry out a project through any overseas subsidiary:

- for the manufacture or increased manufacture of any product, or
- for the provision of specialised engineering or technical services,