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" does 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.

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 ¶2-955 for the tax rate structures.

Tax rebates

As part of the Bicentennial Bonus, resident individuals qualified for a tax rebate of 50% of tax payable for YA 2019. The rebate was capped at $200.

There is no tax rebate for YA 2020.

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 ¶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 ¶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 were used to calculate the reliefs (see ¶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).

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 2020

As announced in the 2020 Budget, to help companies with cash flow, a corporate tax rebate of 25% of tax payable, capped at $15,000, will be granted for YA 2020.

For information, the corporate tax rebates from YA 2013 are tabulated below.

YA	Tax rebate	Capped at
2020	25%	$15,000
2019	20%	$10,000
2018	40%	$15,000
2017	50%	$25,000
2016	50%	$20,000
2015	30%	$30,000
2014	30%	$30,000
2013	30%	$30,000

Corporate tax rate

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

YA	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%
1993	30%
1991 to 1992	31%
1990	32%
1987 to 1989	33%
Up to 1986	40%

- The value of the sponsorships together with income derived from blogging activities should be declared as "Revenue" under trade. As a self-employed person, the blogger is required to maintain proper records for all income (including sponsorship income) and expenses so as to facilitate the annual income tax filing.
- Payments received for the blogging business or activities are taxable regardless of whether they are made under a contract. Such payments are taxable regardless of whether they are received directly from the advertisers, or indirectly through a blogger or social media management company.
- As for the valuation of non-monetary benefits, generally, the taxable value of the products or services received will be their market retail price. If the market retail price is not readily available for products or services that have not been launched or sold in the open market, the market retail price of similar products or services available in the market can be used as a proxy. If the product or service is a niche item that cannot be found in the open market, the recipients may obtain the value of the item from the providers.

Applying the $100 threshold

- Where a blogger has received a blogging fee and sample products or services for giving a review, the blogger is not required to declare the benefit if the sample product or service was provided to him/her on an ad-hoc basis for one-off consumption or testing, and its value does not exceed $100. Where the value exceeds $100, the full value should be declared.

The IRAS has given the following examples of sample products or services and their corresponding tax treatment.

	Complimentary items received by a blogger for product or service review	*Tax treatment*
	Individual items	
1	A lipstick with market value of $49	Do not need to declare as its value does not exceed $100.
2	A camera with market value of $250	Need to declare as its value exceeds $100.
3	Media pass worth $70 to events or places	Do not need to declare as its value does not exceed $100.
4	A plate of fried noodles priced at $9	Do not need to declare as its value does not exceed $100.
5	Sponsored transportation (eg airfare or coach fare) valued at $100	Do not need to declare as its value does not exceed $100.
	Bundle or packaged products	
6	A total of 10 face masks given upfront, each with market value of $10	Do not need to declare as the total value does not exceed $100 and it is not a recurring supply.
7	A box of 4 different or same flavoured mooncakes and the market value of the whole box of mooncakes is worth $80	Do not need to declare as its value does not exceed $100.
8	A set of facial products with market value of $200	Need to declare as its value exceeds $100.
9	A 5-course meal provided by a restaurant for tasting and the bill adds up to $156	Need to declare as its value exceeds $100.
10	All -inclusive sponsored trip including airfare, transport or transfer cost, accommodation, meals, etc, valued at $300	Need to declare as the total market value of the travel package exceeds $100.
	Recurring supply of products or services provided over time	
11	6-month magazine subscription, each with market value of $10	Need to declare as it is provided over a period of time.
12	5 sessions of eyebrow threading worth $98	Need to declare as it is provided over a period of time.
13	4 sessions of body massage worth $200	Need to declare as it is provided over a period of time.
14	1 year supply of complimentary meals at the same or different food outlets	Need to declare as it is provided over a period of time.

- A blogger was rewarded with a handbag worth $98 for reviewing a perfume. In this scenario, the blogger has to declare the $98 as the bag is not for one-off consumption or testing.
- A blogger often receives complimentary items or gifts or products without any obligation for him/her to write a review on the items received. In this scenario, the blogger is not required to declare the complimentary item or gift or product if it is given to him/her on an ad-hoc basis and the value of the gift or product does not exceed $100.

	Items received for blogger's review	*Tax treatment*
1	Door gift worth $120 received during a product launch event	Need to declare as its value exceeds $100.
2	Unsolicited gift worth $20 received in the mailbox or through blogger or social media management company	Do not need to declare as its value does not exceed $100.

- A food blogger was invited for a meal together with three friends for food tasting; the total bill is $95. In this scenario, he is not required to declare the value of the meal if it is provided to him on an ad-hoc basis and the total bill does not exceed $100.

¶4-230 The *BBO* case and IRAS' position on taxability of gains derived by an insurer from the sale of investments

A case history and summary of *BBO* follow below.

U Limited v CIT (2012) MSTC ¶50-010

In *U Limited v CIT*, the Singapore Board of Review held that, on the balance of probabilities, the taxpayer had not engaged in any trade or business in the transaction of the shares in question.

ERIS (SMEs)

Objective

Section 13J sets out the ERIS (SMEs) incentive, which aims to promote an entrepreneurial spirit in the smaller high-risk companies and their employees.

Tax incentive

Where a qualifying employee derives any gains or profits in any YA, after the expiry of the minimum holding period, from:

- any stock option granted during the period 1 June 2000 to 31 December 2013, or
- any right or benefit under any share acquisition scheme (other than a stock option scheme) granted during the period 1 January 2002 to 31 December 2013,

to acquire shares in any qualifying company or in its holding company, 50% of the gains or profits up to $10m over a period of 10 years will be exempt from tax. Conditions apply.

The amount of gains or profits is calculated as follows:

- if the price to be paid for the shares under the right or benefit equals or exceeds the market value (or net asset value if the market value cannot be determined) at the time of the grant of the right or benefit

  the amount is calculated according to s 10(6), and
- if the price is at a discount to the market value (or net asset value if the market value cannot be determined) at the time of the grant of the right or benefit

  the amount is calculated according to s 10(6) less the amount of the discount.

Gains or profits derived by a person for the release of such a right or benefit because of:

- his resignation, or
- termination of employment with the qualifying company due to misconduct,

are, however, not exempt.

Conditions

Where an employee is granted a right or benefit to acquire shares in a holding company of the company in which he is employed, the gains or profits derived from the right or benefit will qualify for the preferential tax treatment if:

- the company and the holding company are both incorporated in Singapore
- the holding company grants the right or benefit to acquire its shares to its employees or the employees of companies within its group, and
- at the time of grant by the holding company of the right or benefit to acquire its shares:
  - the company and the holding company are carrying on business in Singapore
  - the market value of the gross assets of the company does not exceed $100m
  - the market value of the gross assets of the holding company and companies within its group does not exceed a total of $100m, and
  - the company in which the employee is employed has not granted any right or benefit to any of its employees to acquire its shares (s 13J(4)).

Definitions

"Shares" include stocks but exclude any redeemable or convertible shares or shares of a preferential nature.

"Minimum holding period":

- in relation to a right or benefit to acquire shares in a qualifying company or holding company under any stock option scheme, means the period, prescribed by the SGX during which no option may be exercised under a stock option scheme implemented by any SGX-listed company, which would have been applicable to the stock option granted by the qualifying company or holding company, as the case may be, if it were a SGX-listed company, and
- in relation to a right or benefit to acquire shares in a qualifying company or holding company under any share acquisition scheme (other than a stock option scheme), means:
  - a period of at least one year after the grant of the right or benefit, during which the shares so acquired may not be sold if the price to be paid for the shares under the right or benefit is at a discount to the market value (or net asset value at the time of grant, if the market value cannot be determined), or
  - a period of at least six months after the grant of the right or benefit, during which the shares so acquired may not be sold if the price to be paid for the shares under the right or benefit is equal to or exceeds the market value (or net asset value at the time of grant, if the market value cannot be determined).

"Share acquisition scheme" means a scheme which:

- imposes a minimum holding period requirement, and
- allows an employee of a company to own or purchase shares in a qualifying company or that of its holding company, including:
  - stock options
  - share awards, and
  - other similar forms of employee share purchase plans

  but excluding:
  - phantom shares rights
  - share appreciation rights, and
  - any other similar rights.

- Third and most importantly, the retention of the share options upon the taxpayer's death had always been part and parcel of the taxpayer's terms of employment. This strongly indicated that the retention of the share options by the estate constituted a benefit obtained by reason of the taxpayer's employment, despite the element of discretion present in this case.

¶5-280 *BRE v CIT* case

In *BRE* v *CIT* (2018) MSTC ¶70-041; [2018] SGHC 77, the tax issue was whether the appellant (BRE, an Australian citizen) or, as he contended, Subjunctive (a company incorporated in Singapore), was the person who had derived the remuneration payments in question as income.

The Comptroller had assessed BRE to tax on his income derived from the remuneration payments to him by TGS (an Australian company), consisting of base pay, annualised target share of TGS's net income before tax, accommodation expenses reimbursement, retirement savings plan contributions and company funded medical benefits insurance, between 2012 and 2016. Those payments were all paid into Subjunctive, a company which was incorporated in Singapore on 2 June 2010, was created and owned by BRE, and had no other employees besides BRE himself. BRE claimed that Subjunctive (and not he) ought to have been served with the notices of tax assessments.

On the evidence, the High Court ruled that TGS was employing BRE as its project manager in Singapore. BRE did not, however, hold an employment pass under TGS only because when BRE signed the contract with TGS, he was already holding an employment pass under Subjunctive. BRE claimed that he had been working as the project development manager for TGS as an employee of Subjunctive, but he was not able to produce any written contract between TGS and Subjunctive, or adduce any corroboration from anyone in TGS to support his claim. BRE's counsel had further contended that if BRE was treated as the employee of TGS, then it must follow that without an employment pass with TGS, BRE would have been working illegally in Singapore and that being so, no tax should be payable by BRE for the illegally obtained income. The High Court dismissed this contention, holding that unless BRE can show some ground that offends public policy, the income earned is taxable even if BRE did not have the requisite licence for his work.

¶5-300 Non-taxable receipts

Based on the s 10(2) definition of "gains or profits from any employment", money paid or benefit granted to an employee is taxable as employment income to the employee if it is a reward for his services, ie for his "acting as or being an employee". The receipt or benefit will not be taxable as employment income merely because he would not have had the receipt or benefit were he not an employee.

Example 17

An employee won a $500 lucky draw voucher during his employer's annual dinner-and-dance function. The amount of $500 will not be taxable to him as it is in the nature of a windfall gain and not granted to him in respect of his employment.

In any case, it is not taxable, being covered by the IRAS concession (see Item 1, Table 3 in ¶5-900).

The receipts discussed in the following paragraphs have been held not to be income.

Inducement payments

Payments made to induce a person to enter into employment will be taxable if they represent payment for future services. An inducement payment would not be taxable, however:

- if it is made on an "out-and-out" basis and not for services to be rendered, or
- if it is compensation for the loss of a substantial personal right.

The following cases illustrate these principles.

Undertaking to serve

In *Pritchard v Arundale* (1972) 47 TC 680, the taxpayer was a partner in an accounting practice. He agreed to serve a client company as joint managing director for seven years beginning not later than 1 January 1963. In consideration of his undertaking to serve, he was given 4,000 shares of the company. He in fact joined the company on 1 October 1962. The taxpayer contended that the transfer of the 4,000 shares to him did not give rise to any income tax liability because it was made to induce him to give up his own practice and status and to compensate him for doing so.

Megarry J distinguished an undertaking to serve from the rendering of services and held that the transfer of shares was not for services rendered or to be rendered. The taxpayer could have died before he commenced his employment with the company and yet there was no provision in the service agreement for him to return any of the consideration. The receipt was therefore not for services to be performed by the taxpayer.

Signing-on fee

In *Jarrold v Boustead* (1964) 41 TC 701, an amateur rugby player received a once-off signing fee for turning professional. It was held that the fee did not form part of the emoluments arising from an office or employment to him but was instead a capital sum paid to him for the life-long loss of his amateur status.

In contrast, in *Riley v Coglan* (1967) 44 TC 481, the taxpayer received a signing-on fee for agreeing to play for a club for a specified period. The payment was recoverable by the club on a pro rata basis if the taxpayer did not serve the required period. It was held that the fee was remuneration for future services and therefore taxable income.

- The item is an apparatus used by a businessman for carrying on his business (the "business use" test).
- The item must be an "apparatus" which excludes the place in which the business is carried on. Under the "business premises" test, an item that performs simply and solely the function of "housing" the business or providing shelter is not plant (*Cole Bros v Phillips* [1981] STC 671).

An item that is not stock-in-trade can be regarded as plant only if it satisfies both the "business use" and the "business premises" tests. Whether an item passes both the tests is a question of fact and degree. An important consideration is the nature of the business being carried out.

"Business use" test

The "business use" test first gained prominence in *IRC v Barclay Curle & Co Ltd* (1968) 45 TC 221. In that case, a dry dock installation was held to be plant and the whole of the expenditure, including that incurred to excavate the basin and build the dry dock, qualified for CA. Lord *Reid* said:

> "It seems to me that every part of this dry dock plays an essential part in getting large vessels into a position where work on the outside of the hull can begin. And that it is wrong to regard either the concrete or any other part of the dock as a mere setting or part of the premises in which this operation takes place. The whole dock is, I think, the means by which, or plant with which, the operation is performed".

In *Schofield v R & H Hall Ltd* (1974) 49 TC 538, it was held that the grain silos in question were plant as they were primarily used, not for storing the grain, but for receiving grain from ships and discharging it into lorries. Specifically, the silos were large concrete structures used for sucking grain up from ships into bins from which it was released onto the lorries. The silos effectively carried out those functions plus the cooling, turning over and fumigation of the grain. Simple storage itself was a "trifling part" of the silos' function.

The above two cases illustrate the principle that business premises are not plant "except in the rare case where the premises are themselves plant" (Lord *Lowry* in *IRC v Scottish & Newcastle Breweries Ltd* [1982] STC 296).

In *Cooke v Beach Station Caravans Ltd* (1974) 49 TC 514, a heated swimming pool and paddling pool were held to qualify as plant to an operator of caravan parks. The pools were in effect part of the apparatus of the caravan park; they were not merely "where it's at".

In contrast, in *Benson v Yard Arm Club Ltd* (1979) STC 266, it was held that an old barge kept moored and used as a floating restaurant was not plant. In his judgment, *Buckley* LJ made a distinction between "something by means of which the business activities are in part carried on" and a structure which "plays no part in the carrying on of those activities, but is merely the place within which they are carried on".

"Business premises" test

Even if an item has passed the "business use" test, it has to satisfy the "business premises" test before it can be regarded as plant. The following UK tax cases are now looked at in turn:

- *J Lyons and Co Ltd* — lamps
- *John Good & Sons Ltd* — movable partitions, and
- *Scottish & Newcastle Breweries Ltd* and *Wimpy International Ltd* — expenditure incurred for the creation of an atmosphere or ambience.

J Lyons and Co Ltd

In *J Lyons and Co Ltd v Attorney-General* (1944) Ch 281, *Uthwatt* J distinguished "plant" and "setting" as follows:

> "the question at issue may, I think, be put thus: Are the lamps and fitments properly to be regarded as part of the setting in which the business is carried on or as part of the apparatus used for carrying the business? . . . Lamps are required to enable the building to be used where natural light is insufficient . . . In my opinion, these lamps are not, in these circumstances, properly described as plant, but are part of the general setting in which the business is carried out [emphasis added]".

In *Lyons*, although the lamps used in the premises were exclusively devoted to the business, their presence was not dictated by the nature of the trade. In other words, the lamps would have been necessary to light up the building regardless of the nature of the business.

The judge had also used the word "setting" in a narrow sense, something mutually exclusive from plant. In the next case, however, the word "setting" was used in a broader sense that possibly encompassed "plant". The Singapore Court of Appeal in *ZF* noted this inconsistency in the use of terminology among the UK tax cases and thus considered the formulation of the "business premises" test to be unhelpful in determining whether an asset qualifies as plant.

John Good & Sons Ltd

In *Jarrold v John Good & Sons Ltd* (1963) 40 TC 681, movable partitions situated in an open plan office were held to qualify as plant even though they were in a sense "setting". Per *Pearson* LJ:

> "the respondent company, instead of having internal walls in their office building, needs to have, and does have, for the special requirements of their business, movable partitioning by means of which they can, in response to changing volumes of business in their departments or to the cessation of departments . . . rapidly and cheaply and without much interruption of business alter the subdivisions of their office building. On that view of the facts, the partitioning undoubtedly can be regarded as 'plant'".

In Singapore, if office partitions form an integral and fixed part of the building, a claim for CA will not be accepted. However, demountable partitions, ie partitions that can be moved from one position to another, qualify for CA. In *S Ltd* (1953) SB VIII, it was held that expanding metal partitions installed in a godown in Singapore

array of amenities and services which made the building tenantable. These included the provision of electricity, air conditioning, lifts, security and alarm systems, toilets and even a pleasant and conducive ambience for tenants and visitors.

The Board viewed that the "business use", "premises" and "completeness" tests were tools to assist it to form the view whether, on the facts, the items in dispute were plant or machinery provided by IH for the purpose of its business.

The Board accepted that IH's business required it to expend capital in the provision of certain items for, or in, or as part of, the building. The fact that the item is attached to a building does not, of itself, disqualify it as plant or machinery. However, if the item serves or functions as the building or premises on or at which the business is carried on, it would not be plant or machinery qualifying for CA. The Board also accepted that the items in dispute could be considered separately, on a "piecemeal" basis (*Cole Bros Ltd v Phillips* 55 TC 188).

Applying the above principles, the Board held that the following qualified as plant or machinery:

- the electrical switchgear and transformers, which were essential means to allow and control the supply of power to the building, and
- the electrical door operating systems (even though they were attached, and could be said, to form part of the building), which were not unlike the motorised steel roller shutter doors in *Carpentaria Transport Pty Ltd v FCT* ATC 4590.

The Board held the following items not to be plant:

- Mechanical door closers

  (The Board regarded these as ordinary doors with small mechanical equipment screwed onto them. On balance, they were not plant or machinery provided by IH for the purpose of its business, but formed part of the premises on which the business was carried out.)

- Decorative fountains and water features located in the front and side of the building

  (Although the Board accepted, in principle, the "piecemeal" approach, it was not persuaded that the fountain and water features, be they taken as a whole or in their separate components, were plant or machinery provided for the purpose of IH's business, ie that of developing, owning and letting commercial buildings. They were nice to have, adding to the attractiveness of the building, but not a necessity. *IRC v Scottish & Newcastle Breweries*, where the décor and murals were used by the hotelier as part of the setting to create atmosphere and make the interior of the hotel attractive to guests and visitors to the hotel, was distinguished.)

- Sanitary fittings

  (The Board applied the "completeness test" and held the view that the identity of the sanitary fittings was not separate from the toilet and that the toilet would be incomplete without the sanitary fittings. *CIT v Taj Mahal Hotel* 1971 82 ITR was distinguished. IH's business of owning and letting a good class office building in the prime business district, although sharing some characteristics with that of the hotelier assessee in *Taj Mahal*, was nevertheless not the same as a hotel business.)

During the hearing, the IRAS conceded on the building automation system wiring being plant. The building had an automation system which controlled the air conditioning. The wiring linked certain mechanical and plant components, such as pumps and motors, to the main control centre.

The IRAS also gave the following criteria that it had adopted when determining whether items in the building qualified as plant:

- whether the items fell within the Sixth Schedule to the Act
- whether the items were considered as standard items in a general commercial building. Non-standard items were not part of the premises and would qualify as plant
- whether there were case law precedents
- whether the items were considered by the IRAS as plant, and
- whether a concession for claim had been granted by the IRAS.

The Board commented that it was "unable to distil much benefit from the Revenue's application of the law" and made no decision with regard to the applicability or non-applicability of the Sixth Schedule with regard to this case.

Examples of plant or machinery

The following are the more commonly cited court cases on "plant".

Held to qualify as "plant":

- Concrete dry dock — *IRC v Barclay Curle & Co Ltd* (1968) 45 TC 221
- Décor, light fittings, murals, plaques, tapestries, pictures and metal sculptures to create an atmosphere for hotel guests — *IRC v Scottish & Newcastle Breweries Ltd* (1982) STC 296
- Decorative screens installed in windows by building societies to attract customers — *Leeds Permanent Building Society v Proctor* (1982) STC 821
- Designs and blueprints (drawings, plans and technical data) — *Nippon Electronic (P) Ltd v CIT* (1979) 116 ITR 231
- Dockside silos — *Schofield v R&H Hall Ltd* (1974) 49 TC 538
- Dyeing house — *Wangaratta Woollen Mills Ltd v FC of T* 69 ATC 4095
- Electric fans and other appliances — *Sundaram Motors v CIT* 71 ITR 587
- Freezing chamber — *CIT, Lucknow v Kanodia Cold Storage* 100 ITR 155
- Horse — *Yarmouth v France* (1887) 19 QBD 647
- Knives and lasts used in the manufacture of shoes — *Hinton v Maden & Ireland Ltd* (1959) 38 TC 391
- Law library — *Munby v Furlong* (1977) STC 72
- Light fittings, ceiling and pedestal fans, and water pipe fittings in hotels — *CIT v Jagadeeschandran & Co* 75 ITR 697

- Movable office partitions — *Jarrold v John Good & Sons Ltd* (1963) 40 TC 681

  Also, demountable partitions — *CIR v Charkay Properties Pty Ltd* 38 SATC 159
- Partitions poles, cables, conductors and switch boards for distribution of electricity — *CIT v Indian Turpentine and Rosin Co Ltd* 75 ITR 533
- Sanitary and pipeline fittings in a hotel — *CIT v Taj Mahal Hotel* 82 ITR 44
- Swimming pools — *Cooke v Beach Station Caravans Ltd* (1974) 49 TC 514, and
- Wells — *CIT v Warner Hindustan Ltd* (1979) ITR 15.

Held not to qualify as "plant":

- Bed of river — *Dumbarton Harbour Board v Cox* (1919) 7 TC 147
- Canopy over garage service area — *Dixon v Fitchs' Garage Ltd* (1975) STC 480
- Designs for wallpaper and furnishing fabrics — *McVeigh v Arthur Sanderson & Sons Ltd* (1969) 45 TC 273
- Electric lamps and fittings in a tea shop — *J Lyons & Co Ltd v Attorney-General* (1944) Ch 281
- False ceilings installed in restaurant — *JW Hampton (HMIT) v Fortes Autogrill Ltd* (1980) STC 80
- Fixtures in fast food restaurants — *Wimpy International Ltd v Warland (HMIT); Associated Restaurants Ltd v Warland (HMIT)* (1988) BTC 11,199
- Gymnasiums — *St Johns' School (Mountford and Knibbs) v Ward* 49 TC 524
- Human body — *Norman v Golder* (1945) 26 TC 293
- Ship used as floating restaurant — *Benson v Yard Arm Club Ltd* (1979) STC 266
- Wallpaper pattern books — *Rose & Co Ltd v Campbell* (1967) 44 TC 500
- Water storage tank used for storing water — *Jayasingrao Piraji Rao Ghatge v CIT* 46 ITR 1160, and
- Water tower — *Margrett v Lowestoft Water & Gas Co* (1935) 19 TC 481.

Some common examples of items that may be classified as plant or machinery are as follows:

- motive power and engines whether driven by steam, gas or electricity, ie boilers, furnaces and dynamos
- shafting, pulleys and banding conveying the power to the machines
- processing machinery whether hand-operated or power driven, eg lathes, pumps and other similar machinery
- stationary transport such as tanks, vaults, containers and partitioning
- mechanical transport such as locomotives, railway wagons, aeroplanes, ships, barges and hovercraft
- electrical devices such as X-ray and electronic equipment, computers, dust extraction plant and fire sprinklers
- office equipment and furniture including typewriters, accounting machines, furniture generally, telephone and intercom installations

- buildings and structures which play a part in the manufacturing process rather than just providing a setting for the operations of the business
- air conditioning, ducting and vents — generating plant, ducting and vents whether installed in a new or old building, and
- expenditure incurred for reticulation services (such as air, gas, water, steam, electricity, oil and fire services) for the relevant installations in a factory.

Note that expenditure on the provision of machinery or plant would include any capital expenditure on alterations to an existing building incidental to the installation of that machinery or plant for the purposes of the TBP (s 22) (see ¶8-220).

Carpets and venetian blinds — IRAS' practice

Since February 1994, the IRAS has recognised that carpets and venetian blinds are an essential part of a modern office in order to project a desired corporate image and to attract customers; they therefore qualify as "plant" (see IRAS e-Tax Guide "Machinery and Plant: Section 19/19A Income Tax Act", updated on 20 April 2011).

Where expenditure on carpets and blinds has previously been allowed a deduction under the replacement basis in s 14(1)(c), CA may be claimed for expenditure on the replacements. Alternatively, a person carrying on a TBP may continue to claim deductions on the replacement basis (see ¶7-100).

In the e-Tax Guide, the IRAS has provided the following non-exhaustive lists of items that it considers to qualify as "plant" and items that it does not consider to qualify as "plant". It is noted that the e-Tax Guide continues to apply the "business use" test and the "business premises" test in determining whether an asset qualifies as plant, although the update on 20 April 2011 was inserted after the Court of Appeal in *ZF* had handed down its decision.

Examples of items that can be considered as plant

"1 Air conditioning and other mechanical installation

2 Artwork and tapestries, posters, paintings, picture frames, demountable décor pillar, demountable décor column and ornamental features, including decorative finishes and murals. These stand-alone objects are generally found to serve a business function in hospitality-related businesses, example clubs, restaurants and hotels. For items that are quasi-structural, ie demountable with separate identity, eg mirrors, décor, a functional analysis is adopted if a legitimate function is served, and the item would be treated as plant even if there are doubts as to whether the premises test is satisfied. In other non-hospitality related businesses, taxpayer need to demonstrate that these are plant and machinery of the trade

3 Books that are tools of the trade and used in the day-to-day operation of the profession

4 Blinds and curtains

5 Building automation and control systems

6 Built-in-storage units and dispensers

7 Carpets and carpet tiles

	Mr Thomas (Example 1)				Ms Sharon (Example 2)			
(H) Past relevant deductions (Note 2)		CA/IBA $24,000		CA/IBA $44,600		CA/IBA $16,000		CA/IBA $26,400
		Loss $5,400		Loss $5,400		Loss $3,600		Loss $3,600
		$29,400		$50,000		$19,600		$30,000
(I) Restricted deductions — cumulative excess over contributed capital (Note 3) [(E)–(F)]			$3,400		$17,400		$5,600		$14,600
CA/IBA c/f			3,000		3,000		2,000		2,000
Losses c/f			$6,400		$20,400		$7,600		$16,600
(J) Deemed income/Deemed loss (Note 4)								Contri cap	$25,000
								Less:	
								CA/IBA	(26,400)
								Loss	(3,600)
								Deemed inc	(5,000)
								Deemed loss	5,000

Notes:

(1) The relevant deductions refer to those CA and/or business losses that a partner of an LLP could claim as deductions against his non-LLP income. The amount of deductions is restricted to the difference between the partner's contributed capital as at the end of the basis period for that YA and the past relevant deductions.

(2) The past relevant deductions for any YA refer to the aggregate of all relevant deductions allowed to the partner less any amount deemed to be income chargeable with tax in past YAs.

(3) Where any amounts of CA and/or business losses are restricted, the restricted deductions cannot be set off against any non-LLP income for that year. Those amounts can be carried forward and set off against the following year's income derived from the LLP, subject to the usual business continuity test and the shareholders' continuity test, where applicable.

(4) As the contributed capital as at 31 December 2020 is lower than the past relevant deductions, the difference of $5,000 will be deemed as income chargeable with tax under s 10(1)(g). Concurrently, an amount of the same value is allowed as a loss deduction against the income of the LLP for that YA.

	YA 2019			YA 2020			YA 2021		
	$	$	$ Restrict	$	$	$ Restrict	$	$	$ Restrict
Trade Income — Mr Thomas									
LLP		0			0			18,000	
Less: CA/IBA b/f		0			0		(3,400)		
Current CA		(24,000)			(20,600)	3,400	(24,000)	(27,400)	
		(24,000)			**(20,600)**			**(9,400)**	
Partnership	20,000			30,000			12,000		
Less: CA/IBA	(5,000)	15,000		(9,000)	21,000		(8,000)	4,000	
Sole proprietorship	8,000			24,000			15,000		
Less: CA/IBA	(30,000)	(22,000)		(9,000)	15,000		(11,000)	4,000	
		(31,000)			15,400			(1,400)	
Rental Income		100,000			98,000			87,000	
Statutory income		69,000			113,400			85,600	
Less: LLP loss b/f								**(600)**	2,400
Less: LLP current loss		**(5,400)**			0	3,000		0	
Assessable Income		63,600			113,400			85,000	
Less: Personal Relief (for example)		(5,000)			(5,000)			(5,000)	
Chargeable Income		58,600			108,400			80,000	
Tax payable		2,674			8,860			4,600	
Relevant deductions		29,400			20,600			10,000	
Past relevant deductions		0			29,400			50,000	
Cumulative relevant deductions		29,400			50,000			60,000	

- service fees.

The PPP operator will be taxed:

- on the profit from the outright sale of the leased asset as and when the profit is recognised in its accounts, as well as
- on the finance income over the lease term.

The service fees will be taxed as and when they accrue in the operator's accounts.

Design, construction and O&M service provider

Under this arrangement, the PPP operator:

- designs and constructs the asset/facility, and thereafter
- provides O&M services to the public sector.

The legal title to the asset may be held either by the operator or the public authority, depending on the agreement. However, the PPP asset will be controlled by the public authority.

This PPP arrangement falls within the scope of the Interpretation of Financial Reporting Standard 112 (INT FRS 112)/Singapore Financial Reporting Standards (International) Interpretation 12 (SFRS(I) INT 12) "Service Concession Arrangements". The INT FRS 112/SFRS(I) INT 12 provides the following two methods for the recognition of the PPP asset:

- The PPP operator will recognise the PPP asset as a financial asset under the "financial asset model" where the PPP operator has an unconditional contractual right to receive cash from the Government. Most PPP arrangements in Singapore would fall within this category.
- The operator will recognise the asset as an intangible asset under the "intangible asset model" where the PPP operator receives a right to charge users of the public service.

The PPP operator would have two streams of income.

- Firstly, the revenue generated during the construction stages will be recognised in accordance with FRS 11 "Construction Contracts" or FRS 115 "Construction or Upgrade Services".
- During the O&M phase, the revenue will be recognised according to FRS 18 "Revenue".

Financial asset model

Where the PPP asset is recognised as a financial asset under the "financial asset model" (this is the situation where the PPP operator receives periodic unitary payments from the Government), the PPP operator can elect either Option 1 or Option 2 below to determine the amount of income derived from the construction of the asset for tax purposes.

Option 1

Under FRS 11 "Construction Contracts" or FRS 115 "Revenue from Contracts with Customers", as the case may be, the operator earns its revenue from the construction of the PPP asset throughout the course of the construction of the PPP asset. Following

the accounting treatment, the operator will be taxed on its construction income as and when the income accrues. Expenditure of a revenue nature incurred from the commencement of business (ie design costs and construction costs) will be deductible subject to s 14 and 15.

Under Option 1, construction income, finance income and service revenue will be subject to tax as and when they are recognised in the profit and loss account.

Option 2

The PPP contract is usually structured such that the unitary payments are made to the PPP operator upon the completion of construction of the PPP asset, and the operator is in a position to perform the services under the PPP contract. This is unlike normal construction contracts where progress payments are received at regular intervals throughout the construction period.

In such instances, a PPP operator can elect Option 2, ie to be taxed on the construction income and finance income only upon the completion of the PPP asset instead of being taxed on its construction income during the construction phase. Similarly, interest costs incurred during the construction period will be deferred as part of construction costs and claimed as deductions upon completion of the PPP asset.

Note that Option 2 will impact only the timing of the taxation of construction income and finance income, and the deductibility of interest costs during the construction phase. The taxability of all other revenue and the deductibility of expenditure incurred will not be affected and will be in accordance with the normal tax rules throughout the PPP project.

Once a PPP operator has submitted its first set of income tax return for the PPP project based on Option 2, the election is irrevocable. The same tax treatment will be applied consistently for all subsequent YAs.

Amortisation of intangible asset

Under the intangible asset model, the PPP operator recognises an "intangible asset" for accounting purposes. The intangible asset represents the operator's accumulated right to be paid for providing construction services during the construction phase of the PPP project. Under FRS 38 "Intangible Assets", the intangible asset is amortised over the period in which it is expected to be available for use by the PPP operator. The PPP operator will be allowed deduction for the amortisation expenses for tax purpose under s 14V.

Atypical PPP arrangements

In certain less typical PPP arrangements, eg the PPP operator receives grants (which can be in lieu of, or in addition, to unitary payments) from the public authority for providing services, the accounting characterisation alone may not sufficiently reflect the scope of the PPP operator's trade for tax purposes. The Comptroller may have to examine the specific terms surrounding an arrangement to determine the appropriate tax treatment. In such a case, a PPP operator may write to request a clarification or tax ruling from the Comptroller to confirm the applicable tax treatment for its PPP arrangement.

	$	$
Net rental income	11,000	
Less: YA 2015 rental deficit transferred from spouse	(3,900)	7,100
Employment income		23,000
Interest income (non-exempt)		1,790
		31,890
Less: Balance of YA 2014 business loss transferred from spouse ($53,390 – $22,500)		(30,890)
		1,000
Less: YA 2015 donations transferred from spouse		(1,000)
Assessable income		0

Withdrawal of transfer of qualifying deductions between spouses with effect from YA 2016

As announced in the 2014 Budget, to simplify the personal income tax system, a married couple is no longer allowed to transfer qualifying deductions and rental deficits between each other with effect from YA 2016.

Any unabsorbed trade losses or capital allowances may still be carried forward to future years to be set off against the future income of the taxpayer until the amount is fully utilised subject to existing rules. Similarly, any unutilised donations may be carried forward to future years to be set off against the future income of the taxpayer up to a maximum of five years.

As a transitional concession, qualifying deductions and rental deficits incurred by a married taxpayer in YA 2015 and earlier YAs were allowed to be transferred to the spouse until YA 2017.

Details of the change can be found in the Inland Revenue Authority of Singapore (IRAS) e-Tax Guide "Change to Assess the Income of a Husband and Wife as Separate Individuals", published on 26 May 2014.

RELIEFS UNDER S 39

¶12-200 Reliefs under s 39

Section 39 lists the different reliefs that an individual taxpayer, who is a resident in Singapore in the YA, is allowed to claim against his assessable income. An individual who is a non-resident is not entitled to claim any relief under s 39.

With effect from YA 2018, the total amount of personal income tax relief an individual can claim is capped at $80,000 per YA.

¶12-210 Earned income relief

Section 2 defines "earned income" as the statutory income of an individual from:

- gains or profits from a TBP, vocation or employment on which tax is payable (ie s 10(1)(a) and 10(1)(b) income source), and
- any pension in respect of past services on which tax is payable (ie s 10(1)(e) income source),

after deducting:

- any losses from s 10(1)(a) source
- carry-back of capital allowance and losses, or
- qualifying deduction of capital allowance, losses and donations (excluding donations not deducted due to insufficient statutory income).

The philosophy behind earned income relief is that it essentially differentiates between an individual's income earned from the carrying on of a business or employment and his income derived from investments. Unlike income from the latter source (eg rents, dividends and interest), income from the former source requires more active participation or the contribution of efforts by the individual.

Elderly workers and handicapped workers

The amount of relief granted is revised for elderly workers and handicapped workers with effect from YA 2013 to encourage elderly workers to stay employed and to provide further support to handicapped workers.

Determining the age of the individual taxpayer

The individual taxpayer's age is determined by reference to his age at any time in the year immediately preceding the YA (ie basis year).

Handicapped individual

A "handicapped" individual is one who, in the year immediately preceding the YA, was totally blind, or suffering from a physical or mental disability, which permanently and severely restricted his capacity to work.

¶12-220 Spouse relief

From YA 2010, a resident taxpayer can claim spouse relief of $2,000:

- if the spouse is living with or is being maintained by the taxpayer during the year preceding the YA, and
- provided the spouse did not have income exceeding $4,000 in that basis year (s 39(2)(a)).

A taxpayer can claim spouse relief if:

- the taxpayer's spouse lives with him during, or
- the taxpayer maintains his spouse for

any part of the year preceding a YA.

Living together

Living together is not given a strict literal meaning. It does not suggest that both spouses must be physically living under the same roof throughout the basis year. The intent, it is submitted, is the important factor. Thus, if one spouse is away on an extended holiday or business trip during the basis year, the relief is not denied. A married couple is regarded as living together unless (s 51(3)):

- they are separated under a court order or by a deed of separation

Macmillan should therefore not elect FTC pooling but should claim s 13(8) exemption on Country P dividend and source-by-source foreign tax credit on Country P interest instead.

The minimum Singapore tax payable for YA 2020 = $58,175.

Note: In the scenario in which two items of foreign income which are received in Singapore meet the conditions for both s 13(8) exemption and FTC pooling to apply, claiming the exemption on both incomes will of course give the most tax-beneficial outcome in Singapore. This is because the application of the **pooled credit restriction rule** (see ¶14-365) is such that FTC pooling will at best result only in no incremental Singapore tax payable on the foreign incomes received in Singapore, an outcome already assured by claiming exemption on those incomes.

¶14-400 Claim for foreign tax credits under tax treaties

The information below is adapted from the IRAS' website at www.iras.gov.sg (updated as at 2 November 2018).

To claim tax treaty relief, the Singapore resident company must show the treaty partner that it is tax-resident in Singapore. To do this, the company can:

(a) *Apply for a Certificate of Residence (COR)*

This is a letter certifying that a company is resident in Singapore for purposes of claiming the tax treaty relief, ie its business is controlled and managed in Singapore for the YA concerned.

(b) *Seek the IRAS' endorsement of a tax reclaim form*

In some cases, the foreign treaty partner will require the company to submit a tax reclaim form issued by that jurisdiction together with or in place of a COR.

What is a Certificate of Residence?

Under the treaties, the treaty partners may provide:

- tax exemption, and/or
- lower withholding tax rates

to residents of Singapore on income derived from their jurisdictions. Non-residents do not enjoy these benefits.

A COR is required by and must be submitted to the foreign tax authority of the treaty partner to prove that the company is a Singapore tax resident.

Example 12

ABC Pte Ltd, a Singapore resident company, received royalty income from Company XYZ, a resident of Australia. The domestic withholding tax rate in Australia on royalties would be 30%, but this tax rate is reduced to 10% under the Singapore–Australia tax treaty. ABC Pte Ltd needs to produce a COR to the Australian Tax Office to enjoy the lower withholding tax rate of 10%.

A Singapore resident company that is not claiming tax treaty relief but wishes to obtain a letter certifying that it is resident in Singapore may write to the IRAS with the following information:

- name and Unique Entity Number (UEN) of the company
- reason(s) for requesting the letter of residence, and
- YA for which the letter is required.

Companies eligible to apply for COR

To apply for or obtain a COR:

- a company must be resident in Singapore, and
- the foreign income is remitted or will be remitted to Singapore.

Nominee companies

A nominee company does not qualify for a COR as it is not the beneficial owner of the income derived from sources in the treaty country. A nominee company is a company that acts as a custodian of shares on behalf of the beneficial owner(s).

Foreign-owned investment-holding companies

A foreign-owned investment-holding company that:

- has purely passive sources of income, and
- receives only foreign income

does not qualify to apply for a COR.

A foreign-owned company is a company where 50% or more of its shares are held by foreign companies/shareholders.

However, the IRAS may still issue a COR to a foreign-owned investment-holding company if such a company is able to satisfy the IRAS that:

- the control and management of the company's business is in Singapore, and
- the company has valid reasons for setting up an office in Singapore.

Such a company must be able to demonstrate to the IRAS that decisions on strategic matters are made in Singapore, eg its board of directors' meetings are held in Singapore. Besides this, the company must also:

- have related companies in Singapore that are resident in or that have business activities in Singapore
- receive support or administrative services from a related company in Singapore
- have at least one director based in Singapore who holds an executive position and is not a nominee director, or
- have at least one key employee (eg Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Operating Officer (COO)) based in Singapore.

Non-Singapore incorporated companies

Non-Singapore incorporated companies and Singapore branches of foreign companies do not qualify to apply for a COR, except for the exceptional scenarios stated below, as these companies are not controlled or managed in Singapore. For Singapore branches of foreign companies, they are controlled and managed by their overseas head offices.

However, the IRAS may still issue a COR if such a company is able to satisfy the IRAS that:

- its control and management is in Singapore, and
- it has valid reasons for not incorporating in Singapore.

The IRAS reserves the right to request additional information from the company.

How to apply for a Certificate of Residence?

From June 2017, all COR applications have to be e-filed via the IRAS' *myTax Portal*. Except for companies in the following circumstances, paper applications will no longer be accepted:

- a company applying for a COR for a sole-proprietorship business owned by the company
- a company applying for a COR for a partnership business of which the company is a partner
- a company claiming benefits under limited treaties, and
- a non-Singapore incorporated company.

These companies may write to the IRAS with the following details:

- name and UEN of the company/sole-proprietorship/partnership
- reason(s) for requesting the COR
- YA for which the COR is required
- name of treaty country
- nature and amount of income to be derived from treaty country
- name of the foreign company/person paying the income
- date of remittance of income, and
- confirmation that the control and management of the company for the whole of the preceding calendar year are/will be exercised in Singapore.

An eligible company can apply for a COR for:

- the current YA
- the next YA, or
- up to four back YAs.

Example 13

In the year 2020, the company may apply for a COR for YA 2020, YA 2021, and YA 2016 to YA 2019.

¶14-410 Deduction method

In Singapore, income tax is not a deductible expense for tax purposes (s 15(1)(g)). In practice, however, the IRAS allows a Singapore resident person to report the amount of his foreign income received in Singapore after deducting foreign tax. The deduction method relieves double taxation because the person thereby reports a smaller amount of foreign income in his Singapore income tax computation, compared with the credit method which requires the foreign income to be grossed up. The person does not qualify for any tax credit (see ¶14-310, Example 2, column C).

The deduction method would be preferred to the credit method where, for example, the Singapore company has unabsorbed capital allowances or losses such that it has no Singapore tax liability against which the foreign tax credit may be set off. By requiring a smaller amount of foreign income to be reported (compared with the credit method), the deduction method will result in a bigger amount of unabsorbed items available for:

- group relief
- carry back, and/or
- carry forward,

where applicable (compared with the credit method) (see ¶9-000ff).

¶14-450 Tax credits for approved redomiciled companies

Singapore introduced the inward domiciliation regime for companies with effect from 7 October 2017 (see Pt XA of the *Companies Act (Cap 50, 2006 Rev Ed)* and also ¶2-650). This change in company law brought about extensive implications in income tax law, including the topics of:

- deductions
- capital allowances, and
- the granting of foreign tax credits.

The information and example below are taken from the explanatory statement to s 34H, in operation on 26 October 2017, in the Income Tax (Amendment) Bill 2017.

Visiting teachers or researchers

Recent tax treaties negotiated by Singapore continue to include a separate article on teachers and researchers. Under these treaties, subject to certain conditions, payments by way of remuneration to teachers or researchers are not taxed in the country where the services are provided (ie in the country of visit). These provisions are aimed at fostering cross-border exchange of academics and researchers.

Other income/Income not expressly mentioned

This article covers items or sources of income not dealt with in the other articles of a tax treaty. The IRAS has indicated that:

- distributions from real estate investment trusts (REITs), and
- withdrawals from supplementary retirement scheme (SRS) accounts

would fall within this article unless they have been specifically covered under another article (eg REIT distributions are specifically covered under the "Dividends" article in Singapore's treaty with the UK).

Non-discrimination

Departing from the OECD Model Tax Convention, the scope of the "Non-discrimination" article in Singapore's treaties is normally restricted to the taxes covered by the treaty.

Exchange of information

This article provides for the EOI between the tax authorities of the contracting countries. The objective is to prevent tax evasion. The information to be exchanged may relate to:

- changes in the domestic tax laws of the contracting countries, or
- a specific taxpayer (upon the treaty partner's request if it has a valid tax interest for making the request).

The article also provides that the tax authority of the requesting country is required to treat the information received as secret. The information is not to be disclosed to any person other than those concerned with:

- the enforcement, assessment and collection of taxes, or
- the determination of tax appeals including a court of law.

A contracting country is not obliged, however, to disclose any business, industrial or professional secrets.

Generally, the EOI provisions in Singapore's tax treaties can take the form of:

- an EOI on request
- a spontaneous EOI or
- an automatic EOI.

For 2018 updates regarding spontaneous EOI, see ¶14-550.

See ¶14-550 for a legislative history.

Limitation of relief

Because Singapore taxes foreign income only upon remittance, the tax exemption (or reduction) of any income (eg royalties or interest) in the country of source under a Singapore tax treaty may result in an unintended double non-taxation (or benefit) if the recipient of the income does not remit it to Singapore. To prevent this, the treaty may include a "Limitation of Relief" article which provides that the Singapore resident person would be granted tax exemption or reduced withholding tax in the treaty country only if the income is:

- received in Singapore, and
- consequently subject to tax in Singapore.

The IRAS has indicated that the "Limitation of Relief" article in its treaties applies only to income that is regarded as foreign-sourced under Singapore law. The IRAS has taken the position that under the *Income Tax Act*, income derived from a business carried on in Singapore is Singapore-sourced income even if the income:

- may be paid by a person outside Singapore, or
- is paid in respect of work done outside Singapore.

As a condition to allow the Singapore resident such a tax exemption or reduction, the tax authority of the treaty country would normally require him to furnish a certificate from the IRAS stating that he is a resident of Singapore. Some treaty countries may also require the IRAS to certify that the Singapore resident has remitted or will remit the foreign income to Singapore. The IRAS will issue the COR to a taxpayer if he has provided all relevant information to the IRAS.

Assistance in the collection of taxes

This article was inserted in the 2005 version of the OECD Model Tax Convention. See also ¶14-550.

Entitlement to treaty benefits

This article was inserted in the 2017 version of the OECD Model Tax Convention. It includes a principal purpose test (PPT) which seeks to deny benefits provided under the treaty in abusive cases where it is reasonable to conclude that the principal purpose or one of the principal purposes of the arrangement or transaction in question is to obtain the benefits under the treaty in a manner that would not be in accordance with the object and purpose of the relevant treaty provisions.

The principal purpose of an arrangement or transaction is a question of fact and has to be determined by carrying out an objective analysis of the aims and objects of all persons involved in the arrangement or transaction, taking into account all the facts and circumstances. Based on such objective analysis, it must be reasonable to conclude that one of the principal purposes was to obtain the benefits of the treaty in an improper and abusive manner before the PPT may be invoked to deny the treaty benefits. The principal purposes of an arrangement or transaction would not be determined just by reviewing the effects of the arrangement or transaction. Where the arrangement is connected with a core commercial activity and its form is not contrived, it would not be reasonable to conclude that one of the principal purposes of the arrangement was to obtain a treaty benefit.

financial accounts held by US persons. Failure to do so would mean that applicable payments to the US account holders by the FFIs are subject to US domestic withholding tax rates).

In this regard, the Minister may, by order, declare as an "international tax compliance agreement":

(a) such an agreement

(b) any agreement modifying or supplementing that agreement, or

(c) any other agreement between the Singapore Government and a foreign government which makes provisions corresponding, or substantially similar, to that made by an agreement in (a) or (b) (s 105J and 105K)

- obviated the need for a tax treaty or an EOI arrangement to be separately prescribed under s 105C (repealed) before the Comptroller can use his powers under Pt XXA to comply with a request made under the tax treaty or EOI arrangement (s 105A(1))
- clarified that information may be sought and furnished under Pt XXA concerning any type of tax (not only income tax) of the foreign jurisdiction that is covered by the EOI provision in the tax treaty or EOI arrangement (s 105A(4))
- removed the requirement for the Comptroller to separately notify the person who has possession or control of the information sought, of a request for information protected under the banking or trust company secrecy laws; he only has to notify the person in relation to whom the information is sought (the amended s 105E and 105F)
- enhanced the Comptroller's information-gathering powers (see s 65D, 65E and ¶17-000ff), and
- replaced the former Pt XXB with a revised Pt XXB (comprising s 105I to 105P) titled "International Agreements to Improve Tax Compliance":
  - the revised s 105L requires a specified person to provide the Comptroller information of a specified description, at a specified time or frequency; the person, description of information, and time or frequency will be specified by regulations under the revised s 105P. The duty to provide the information prevails over any duty of secrecy but does not extend to "information subject to legal privilege" (this term appears in the amended s 65B and the revised s 105L; there is a revised definition of this term in s 2)
  - the failure to comply with the revised s 105L, and the giving of false information in purported compliance with it, are offences that may, upon conviction, result in imprisonment (s 105M)
  - information obtained to fulfil a request for information under a tax treaty or an EOI arrangement, as well as information provided or obtained for the purpose of an international tax compliance agreement, may be used for a domestic tax administration purpose (s 105GA in Pt XXA and s 105O in Pt XXB).

On 9 December 2014, Singapore signed the IGA Model 1 with the US (a copy of the IGA1 can be accessed from the IRAS' website at www.iras.gov.sg). Under the IGA1:

- the information will be exchanged directly between the relevant Singapore and US government agencies
- the FFIs need not conclude agreements individually with the US IRS, and
- information on US account holders need only to be reported directly to the relevant Singapore authorities instead of the US IRS.

Some relevant changes introduced by the *Income Tax (Amendment) Act 2014* are:

- extending the scope of EOI to cover also multilateral EOI arrangements (previously only bilateral treaties were covered) (s 105A and 105BA as amended). This change in part reflects Singapore's signing of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters
- controlling the confidentiality of the proceedings and documents used in the proceedings, where the proceedings are initiated to review actions of the Comptroller taken to enable Singapore to carry out EOI for the purpose of:
  - a tax treaty, or
  - an EOI arrangement (s 105HA) (see also *AXY & Ors v CIT* (2015) MSTC ¶70-035; [2015] SGHC 291 below), or
  - an international tax compliance agreement (s 105Q)
- permitting any other person authorised by the Comptroller to also receive information to enable Singapore to discharge her obligations under an international tax compliance agreement (s 105L as amended) (previously only the Comptroller could receive such information)
- authorising the Comptroller to give directions to ensure that any arrangements or actions designed to circumvent:
  - the obligation of disclosure under s 105L, or
  - other obligations imposed by regulations under s 105P (these obligations include those under the recently-signed IGA1)

  may be disregarded (s 105MA, an anti-avoidance provision)
- permitting the disclosure to the authorised officers of a foreign government of any information that the Comptroller considers to be foreseeably relevant to the administration or enforcement of the foreign country's laws concerning any tax of that country, under the terms of a tax treaty or an EOI arrangement (whether bilateral or multilateral) (s 6(4A)).

AXY & Ors v CIT (2015) MSTC ¶70-035; [2015] SGHC 291

The applicants are Korean nationals. The National Tax Service of the Republic of Korea ("NTS") had issued a request dated 23 September 2013 to the Comptroller in Singapore for the provision of information on the applicants' banking activities in Singapore under:

- s 105D, and
- the "EOI" article of the Singapore–Korea tax treaty as amended by the 2013 Protocol.

Income Tax Amendment Act 2017

The *Income Tax Amendment Act 2017* amended s 105K (International tax compliance agreements) to:

- clarify that the Minister may by order declare a CAA or CbCR exchange agreement between the competent authorities of Singapore and another country as an international tax compliance agreement, and not just a CAA or CbCR exchange agreement between governments
- clarify that the Minister may also declare any other agreement or arrangement between the competent authorities of Singapore and another country (and not just between governments) which makes provisions corresponding or substantially similar to any agreement in s 105K(1) as an international tax compliance agreement, and
- provide that an order declaring an agreement or arrangement as an international tax compliance agreement takes effect only on or after that agreement or arrangement enters into force in Singapore. Where an order covers more than one agreement or arrangement, then the order does not take effect on or after a single date, but takes effect for each agreement or arrangement on or after the date it has entered into force for Singapore. This amendment would apply to a scenario where the MCAA (see below), or the MCAA CbCR, enters into force between Singapore and different signatories to the MCAA (or MCAA CbCR, as the case may be) on different dates.

Income Tax (Amendment) Act 2018

The *Income Tax (Amendment) Act 2018* provides that the Minister may also make regulations to enable the IRAS to implement a secondary mechanism for CbCR. A secondary mechanism will not be required if a foreign MNE group has filed a CbC Report in another jurisdiction, and that jurisdiction exchanges the CbC Report with Singapore. Conditions for invoking the secondary mechanism will be set out in the regulations. These conditions are in line with the OECD's CbCR guidelines (s 105P(1A)). See also ¶13-950.

Other recent developments

Multilateral CAA for CRS (MCAA CRS)

On 21 June 2017, Singapore signed the MCAA CRS. The signing of the MCAA CRS enables Singapore to efficiently establish a wide network of exchange relationships for the AEOI based on the CRS. Before that, Singapore had signed bilateral CAAs for CRS with several jurisdictions.

The MCAA CRS is a multilateral framework agreement based on the Convention on Mutual Administrative Assistance in Tax Matters. It provides a standardised and efficient mechanism to facilitate the AEOI based on the CRS. Under the MCAA CRS, a bilateral exchange relationship comes into effect only if both jurisdictions:

- are signatories to the MCAA CRS
- have filed the relevant notifications under s 7 of the MCAA CRS, and

- have listed each other as intended exchange partner jurisdictions under the MCAA CRS.

For additional details pertaining to the CRS, refer to the:

- the IRAS' website at www.iras.gov.sg (last updated as at 29 July 2019)
- the IRAS User Guide "Common Reporting Standard: IRAS XML Scheme User Guide for CRS Return", published on 13 October 2017, and
- the Income Tax (International Tax Compliance Agreements) (Common Reporting Standard) Regulations 2016.

Based on the MOF's Press Release dated 9 April 2018, Singapore has activated a total of 64 AEOI relationships (these are listed in Annex A to the Press Release) for the first exchange to take place in 2018. These relationships are established under the bilateral CAAs for the CRS, or the MCAA CRS (source: MOF's website at www.mof.gov.sg).

For CAAs that have entered into force, the respective jurisdictions will be regarded as "Reportable Jurisdictions". SGFIs will have to transmit to the IRAS the financial account information of accounts held by persons who are tax residents of the Reportable Jurisdictions, with the first submission for the CRS Information Reporting Period (Reporting Year 2017) due by 31 May 2018. From 13 February 2018, Reporting SGFIs can authorise their staff and/or a third party to access the new AEOI e-Services in the IRAS portal (see the IRAS' website at www.iras.gov.sg).

CRS audits

The IRAS has indicated that it will, in the second half of 2019, commence desk-based and on-site reviews on compliance with the CRS. It will adopt a risk-based approach which focuses on Reporting SGFIs that pose a higher risk of non-compliance with the CRS.

To determine risk, the IRAS will take into account, among other things,

- an SGFI's business profile and activities
- an SGFI's track record of compliance with the CRS and FATCA obligations and other relevant areas of tax and regulatory compliance, and
- feedback received from CRS partners.

The IRAS expects Reporting SGFIs to:

- put in place sufficient and robust internal controls
- maintain sufficient documentation according to the requirements of the CRS in Singapore
- maintain a programme of periodic CRS compliance reviews by independent reviewers
- follow up on any recommendations by the IRAS and/or independent reviewers to correct any systemic failures regarding its systems, policies or procedures, and
- in the scenario where CRS functions are outsourced, have oversight and governance of the work performed by the service provider, put in place internal controls to manage the outsourcing risks, and ensure that the SGFI has access

of Prescribed Persons Arising from Funds Managed by Fund Manager in Singapore) Regulations. Note that the term "designated investments" is regularly reviewed to recognise new instruments.

Note that rental income derived in respect of immovable property in Singapore is not exempted from tax under the Income Tax (Exemption of Income of Foreign Trusts) Regulations.

This scheme will expire on 31 December 2024.

Foreign charitable trusts

Tax exemption is granted under s 13O for income derived from:

- any funds or assets in any foreign account of a philanthropic purpose trust constituted on or after 18 February 2005 and administered by a trustee company in Singapore, and
- any funds or assets of an eligible holding company established for the purposes of that philanthropic purpose trust which are held for the foreign account of that trust.

A philanthropic purpose trust is a trust established in writing under any law for the benefit of the public and which falls within any of the following prescribed purposes:

- the prevention or relief of poverty
- the advancement of education
- the advancement of religion
- the advancement of health
- the advancement of citizenship or community development
- the advancement of the arts, heritage or science
- the advancement of environmental protection or improvement
- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
- the advancement of animal welfare
- the advancement of any sport which involves physical skill and exertion, and
- any other purpose beneficial to the community (s 13O(3)).

An eligible holding company (EHC) refers to a foreign-incorporated company which is set up to hold assets of a philanthropic purpose trust administered by a trustee company. The shares of an EHC have to be held by the trustees of the philanthropic purpose trust or by their nominee. The operations of EHC must consist solely of trading or making investments for the purpose of the philanthropic purpose trust. An EHC is not entitled to claim:

- any double taxation relief under any Singapore tax treaty, or
- any unilateral tax credit under s 50A.

The funds in the foreign account, in relation to a philanthropic purpose trust, have to be injected solely by settlors who are:

- individuals who are neither citizens of Singapore nor resident in Singapore, unless the Minister otherwise by regulations prescribes
- companies, each of which:
  - is neither incorporated nor resident in Singapore
  - does not have a permanent establishment (PE) in Singapore other than a trustee company
  - does not carry on a business in Singapore
  - does not beneficially own more than 20% of the total number of the issued shares of any Singapore incorporated company
  - does not have at least 20% of the total number of its issued shares beneficially owned, directly or indirectly, by a company which:
    (i) has a PE in Singapore other than a trustee company
    (ii) carries on a business in Singapore, or
    (iii) beneficially owns more than 20% of the total number of the issued shares of any Singapore incorporated company, and
  - has:
    (i) if it has not more than 50 shareholders, all of its issued shares beneficially owned, directly or indirectly, by persons who are neither citizens of Singapore nor resident in Singapore, or
    (ii) if it has more than 50 shareholders, not less than 95% of the total number of its issued shares beneficially owned, directly or indirectly, by persons who are neither citizens of Singapore nor resident in Singapore
- foreign trusts
- other philanthropic purpose trusts that inject funds or assets from their foreign accounts, or
- any other persons that are neither:
  - resident in Singapore, nor
  - constituted or registered under any written laws in Singapore.

The tax exemption will apply to the foreign charitable trust even if the beneficiaries are neither foreign companies nor individuals who are neither Singapore residents nor Singapore citizens.

This scheme, which was due to expire on 31 March 2019, has been extended to 31 December 2024.

Unit trusts

Section 10B provides tax relief to approved unit trusts whose unitholders are:

- resident individuals, or
- foreign investors without PEs in Singapore.

Regulation 2 of the Income Tax (Approved Unit Trust) Regulations provides further details on the scheme.

Exemption from liability to file return

The Comptroller is empowered to exempt any class of persons as he thinks fit from the liability to file a return (s 62(2)). However, note that the Comptroller still has the right to assess such a person if that person fails to submit a return within a reasonable period of time after receiving a request from the Comptroller for submission of the return (s 72(1)).

Estimated chargeable income

From YA 2009, the requirement to furnish an estimate of one's chargeable income applies to all persons other than individuals who have not made a return for the YA. The estimate has to be furnished within three months after the end of the accounting period relating to that YA (s 63(1)). The requirement to furnish an ECI also applies to the following persons who have not filed their returns for that YA:

- individuals who are carrying on or exercising any TBP or vocation (s 63(1A)), and
- partnerships (s 71(3)). In addition to the ECI, the partnership must furnish the names and identification numbers of all partners together with each partner's share of the partnership income.

An ECI enables the Comptroller to raise an estimated assessment with reasonable accuracy. If the taxpayer does not provide an ECI, the Comptroller may raise an assessment based on his own estimate. Failure to furnish an ECI within the stipulated period without reasonable excuse is an offence.

A company is required to file a "nil" ECI if it has no chargeable income.

The submission of an ECI by the taxpayer or its tax agent can be done:

- by using the prescribed ECI forms downloadable from the IRAS' website at www.iras.gov.sg, or
- electronically via the IRAS' *myTax Portal*.

E-filing of the ECI is mandatory from YA 2020.

Electronic service

The Comptroller has provided an electronic service for (s 8A):

- the filing or submission of any return, estimate, statement or document, or
- the service of any notice by the Comptroller.

Each taxpayer would be assigned an authentication code and an account with the electronic service.

An "authentication code" is:

- an identification or identifying code
- a password, or
- any other authentication method or procedure

which is assigned to a person for the purposes of identifying and authenticating the access to and use of the electronic service by that person.

An "account with the electronic service" means a computer account within the electronic service which is assigned by the Comptroller to a person for the storage and retrieval of electronic records relating to that person (s 2(1)).

Any person who is required to file or submit any return, estimate, statement or document may do so himself through the electronic service or through an agent authorised by him.

Filing on behalf of others

The Comptroller can require a person to furnish a return on behalf of another person if the former is in receipt of or has control over the latter person's income (s 69). For example, a trader who sells goods on behalf of a non-resident person may be required to furnish a return of the non-resident's activities in Singapore.

Incapacitated person

A trustee, guardian, curator or committee of any incapacitated person having the direction, control or management of the property or concern of any such person may be made responsible for the returns of such person.

Non-resident person

This also applies to a non-resident's trustee, guardian or committee, or to his attorney, factor, agent, receiver or manager.

Incorrect, negligent or fraudulent returns

Sections 95, 96 and 96A provide for varying degrees of penalties for incorrect returns, depending on the severity of the offence (see ¶17-620).

In *CGH v Public Prosecutor* (2000) MSTC 7,387, a case that involved the former s 96 "Penal provisions relating to fraud, etc", Chief Justice *Yong* expressed his agreement with the interpretation of the term "wilfulness" in *NCP v Public Prosecutor* (1950–1985) MSTC 573 (*Ng Chwee Poh v PP* (1977) 2 MLJ 203 at p 237–8) to mean an act done with intention and knowledge, and "knowledge" could be proved by circumstantial evidence rather than by direct evidence to be gathered from the acts and conduct of the taxpayer.

Section 96 deals with tax evasion and applies to a person who wilfully with intent evades or assists any other person to evade tax under the following situations:

- omits from a return under the Act any income which should be included
- makes any false statement or entry in any return made under the Act, or
- gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of the Act.

Section 96A, on the other hand, deals with serious fraudulent tax evasion and applies to a person who wilfully with intent evades or assists any other person to evade tax under the following situations:

- by preparing, maintaining or authorising the preparation or maintenance of any false books of account or other records, or by falsifying or authorising the falsification of any books of account or records, or

Example 1

Mr Edwards, a British citizen without Singapore permanent resident status, derived income of $5,500, $18,000 and $19,000 from his work in Singapore for the years 2018, 2019 and 2020 respectively. Tax clearance would not be required when Mr Edwards returned to London on 12 June 2020.

- the employee is a non-citizen who is transferred to another company in Singapore due to the restructure, merger or takeover of the company (ie employer) (tax clearance, however, is required where such an employee ceases employment with the former employer and leaves Singapore before returning to seek re-employment with the new Singapore employer)
- the employee is a non-citizen who is away from Singapore for training or business purposes (excluding overseas posting) for three to six months, and
- the employee is a non-citizen employee who is away for overseas posting (which is incidental to the employment in Singapore) on or after 1 January 2016 provided the following conditions are met:
  - (i) the period away from Singapore does not exceed six months
  - (ii) the employee would return to Singapore to work for the same employer and continue to hold a valid work pass under the same employer during the period that the employee is away from Singapore, and
  - (iii) the Singapore employer continues to pay the employee's salary during the said period.

See ¶17-410 for an employer's obligation to withhold monies due to such employee.

For the purposes of s 68, any director of a company, or any person engaged in the management of a company, is deemed to be an "employee" in respect of whom the above notices must be given (s 68(3)).

¶17-140 Inspection and investigation powers

The Comptroller is given very wide powers to obtain further information on the income of taxpayers.

To obtain fuller information than what is provided in a return, or to ascertain whether or not a person is indeed chargeable to tax, the Comptroller may, by notice in writing, require a taxpayer or any other person to provide:

- further or fuller returns (s 64)
- documents for inspection (s 65) — "document" is defined broadly to include written materials as well as data kept in electronic format or other medium (eg disc, tape, film, photograph and paper) (s 65(2))
- a statement containing particulars of bank accounts, details of assets and liabilities, etc (s 65A) — a taxpayer who has received a notice from the Comptroller to this effect must comply with the notice regardless of how busy the taxpayer is with his professional work (*Public Prosecutor v AWSK* (1991) 1 MSTC 7,136), and
- a return of income on behalf of another person (eg a representative or agent may be required to furnish a return on behalf of his principal) (s 69).

The Comptroller is also empowered:

- to access, inspect, copy, check, make extracts or take possession of any document, computer, device, computer program, computer software or computer output, or information, code or technology which has the capability of retransforming or unscrambling encrypted data into readable format, and
- to require the reasonable assistance of any person concerned with the operation of any computer, device, apparatus or material (s 65B).

The Comptroller is given very wide powers under s 65B to obtain information. To facilitate access to information, the Comptroller:

- has full and free access to all buildings, places, books, documents and other papers for any of the purposes of the Act
- may take possession of books and relevant documents or copy or make extracts from them, and
- may require a person in or at a building who appears to the Comptroller to be acquainted with any facts or circumstances concerning any person's income, assets and liabilities to answer questions to the best of his knowledge or to produce a document for inspection.

Section 61B of the Malaysian *Income Tax Ordinance 1947* is the equivalent of s 65B of the Singapore Act. The limits of the Malaysian s 61B were tested in the Malaysian case of *Public Prosecutor v H* (1950–1985) MSTC 295; (1965) MLJ 28.

It was held that these statutory powers must be exercised:

- *bona fide*
- reasonably
- without negligence, and
- only for the purpose for which they were conferred, that is, for income tax purposes.

Power of Comptroller and authorised officers

Section 65B has been amended to empower the Comptroller, or an officer authorised by the Comptroller as a specially authorised officer, to gain entry by force to any building or place if the Comptroller or specially authorised officer:

- has reason to believe that there is in that building or place any document or thing that may be, or that contains information that may be, relevant to an investigation of an offence under s 37J(3), 37J(4), 96 or 96A of the Act or required as evidence in proceedings for an offence being investigated under s 37J(3), 37J(4), 96 or 96A of the Act
- has reason to believe that the document, thing or information is likely to be concealed, removed, destroyed or deleted by any person, and

- is unable to gain entry to that building or place after stating his authority and purpose and demanding such entry.

The Comptroller or a specially authorised officer who has gained entry by force to any building or place may exercise any of the powers conferred under s 65B(1) to search any person found in a building or place for any document or thing:

- that may be relevant to an investigation of, or
- that may be required as evidence in proceedings for,

an offence under s 37J(3), 37J(4), 96 or 96A of the Act.

In addition, the Comptroller or the specially authorised officer (called an arresting officer under s 65F, 65G, 65H and 65I) may:

- arrest without warrant any person who is believed to have committed an offence under s 37J(3), 37J(4), 96 or 96A of the Act
- search an arrested person, and
- examine an arrested person.

Taxpayer audits and compliance checks

The IRAS has a systematic method to select taxpayers for field audits and identify industries and professions for routine audits and compliance checks. These audits or compliance checks involve an examination of the taxpayers' books, records and financial affairs to verify that their returns comply with the tax law. By these audits or compliance checks, the IRAS had uncovered common errors that include:

- understatement of income
- overstatement of purchases and other expenses
- wrongful claims for expenses that are prohibited under s 15(1)
- failure to ascertain the actual closing stock value
- failure to report income from sources such as rent and director's fees
- failure to report employees' benefits, such as transport and holiday allowances, in their returns of remuneration (Form IR8A), and
- failure to withhold tax on certain income paid to non-residents.

Note that the types and amounts of penalties for such errors would depend on the severity of the offences.

Other powers

The Comptroller is also empowered by the Act to:

- recover tax from a taxpayer who is leaving the country (s 86)
- make advance assessments or additional assessments (s 73 and 74)
- waive small assessments where the tax payable is $15 or another prescribed amount (s 75)
- approve or withdraw the approval of any pension or provident fund (s 5), and
- approve friendly societies for exemption (s 13(1)(f)(i)).

Professional misconduct

Section 6(11) provides the Comptroller with the power to make a complaint to the "appropriate authority" in relation to any professional misconduct by a person in the person's professional dealings with the IRAS. The Comptroller may, if necessary, provide such an authoritative body with any documents or information relevant to the complaint. The "appropriate authority" in such cases will be the professional body with whom the person concerned is registered.

The effect of this subsection is that the position and obligations of accountants representing taxpayers in negotiations with the Comptroller are made similar to those of legal advisers representing parties in a court of law. It is submitted that a tax agent owes a duty to the Comptroller to investigate the truth and correctness of the submission he makes on behalf of the taxpayer and not merely to act as the taxpayer's post office in transmitting information.

ASSESSMENTS

¶17-210 Notice of assessment

Section 72 empowers the Comptroller to raise income tax assessments. An assessment is normally made on the basis of the information provided by a taxpayer or his agent in the relevant return of income. If a return form is not submitted or if the Comptroller is not satisfied with the information provided therein, the Comptroller may proceed to make an assessment to the best of his judgment.

The notice of assessment is a statutory form. Except where the Act provides specifically that service is to be effected either personally or by registered post, the notice may be served on a person:

- personally
- by post, or
- by transmitting an electronic record of the notice to the person's account with the electronic service where the person has given his consent for the notice to be served on him through the electronic service (s 76(1)).

The term "electronic record" has the same meaning as in the *Electronic Transactions Act (Cap 88, 2011 Rev Ed)*.

In any YA, one or more of the following notices of assessment may be issued to a taxpayer:

- An original (or first) notice of assessment (Form IR 9) is issued when no previous assessment for the particular YA has been raised.
- An amended notice of assessment (Form IR 56) is issued when the revised tax liability is determined to be less than the amount stated in the original notice. The amended notice of assessment will then supersede the original notice for the particular YA.
- An additional notice of assessment (Form IR 61A) is issued when the revised tax liability is determined to be more than the amount stated in the original