



# Foreign sourced income tax exemption in Singapore

(compiled by N Vimala Devi)

Singapore has been slowly but surely making it more attractive for multinationals and entrepreneurs to set up their operations, and to use Singapore as a spring board to go regional and global. Recently, our fund and wealth management industry got a boost when the Government further liberalized the rules on taxation of foreign sourced income. Countries like Hong Kong and Malaysia already provides exemption from taxation of foreign sourced income. To remain competitive and become the hub for fund and wealth management services, the Government announced rules to exempt foreign sourced income from tax in Singapore.

In this paper we explore the evolution in the taxation rules on the changes in the taxation of foreign sourced income in Singapore.

Section 10(1) of the Singapore Income Tax Act ("Act") provides that income accrued in or derived from Singapore or received in Singapore from outside Singapore is chargeable to tax.

The second limb of the charging provision of the Act stipulates that income earned outside Singapore, in other words, foreign sourced income if received in Singapore is subject to tax in Singapore.

To clear away any doubts as to what constitutes "received in Singapore" section 10(25) of the Act was introduced in 1995. Section 10(25) of the Act clarifies that foreign income is received in Singapore, if such income—

- (a) is remitted to, transmitted or brought into, Singapore;
- (b) is applied in or towards satisfaction of any debt incurred in respect of a trade or business carried on in Singapore; and
- (c) is applied to purchase any moveable property which is brought into Singapore.

To encourage foreign funds to flow into Singapore to promote and boost its fund and wealth management industries as well as sustain its competitiveness as a preferred location to incorporate new business or establish international and regional headquarters, from 2003 onwards the Singapore Government has started liberalizing the taxation rules to exempt foreign sourced income from being subject to any further tax in Singapore.

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### Singapore resident individuals

Singapore resident individuals are now free to bring back any of their income from sources outside Singapore without any further Singapore tax on such income. This treatment takes effect from 1 January 2004 as provided in section 13(7A) of the Act:

“There shall be exempt from tax any income arising from sources outside Singapore and received in Singapore; and on or after 1 January 2004 by any individual who is resident in Singapore if the Comptroller is satisfied that the tax exemption would be beneficial to the individual, but excludes such income received by him through a partnership in Singapore.”

### Singapore tax resident companies

As for Singapore resident companies, since 1 June 2003, foreign sourced dividends, foreign branch profits and foreign sourced service income, received in Singapore is tax exempt provided the following conditions are met as stipulated in section 13(8) of the Act:

- (a) In the year the income is received in Singapore, the headline (highest) corporate tax rate of the relevant foreign jurisdiction is at least 15%; and
- (b) The specified foreign income received in Singapore must have been subject to tax in the foreign jurisdiction (either paid or payable).
- (c) The IRAS is satisfied that the tax exemption would be beneficial to the Singapore company.

Of the three groups of foreign sourced income that qualify for the tax exemption, the foreign sourced service income poses the most challenge to prove that they are indeed foreign sourced income as it has to be substantiated that the service income is earned through a *fixed place of operation* in a foreign jurisdiction. This is notwithstanding that such service income could be derived from services rendered outside Singapore; and in accordance with the provisions of a double taxation agreement with the foreign jurisdiction, tax is payable in that foreign jurisdiction.

A fixed place of operation inter alia includes a place of management, an office, or a certain amount of floor space at the disposal of a person, and such a place must also have features of permanence. If the taxpayer cannot prove that the service income is earned through such a *fixed place of operation* in the foreign country, then it is unlikely that the service income would be treated as foreign-sourced service income that would qualify for the tax exemption.


The foreign sourced income tax exemption will also not apply if these conditions are not met:

- (i) the foreign income is not subject to tax in the foreign jurisdiction except where there is a formal tax incentive; and
- (ii) after paying income tax on the foreign income in the foreign jurisdiction where the income was sourced, the foreign income was moved to or invested in another foreign jurisdiction that does not levy any income tax before the income is remitted back to Singapore.

However, the Comptroller of Income Tax has clarified that under certain scenarios, the foreign income remitted into Singapore by companies which are not able to satisfy the above conditions, but are able to satisfy the following qualifying criteria should be exempt from tax in Singapore:

- i. The taxpayer must be able to track the source of income.
- ii. There is no round tripping of locally-sourced income via the overseas investment.
- iii. The taxpayer in Singapore receiving the specified foreign income cannot be a shell company.

Singapore resident companies which do not meet the conditions for the tax exemption on its foreign sourced income as provided under section 13(8) of the Act, should seek a ruling and confirmation of the tax exempt status from the Comptroller of Income before remitting their foreign sourced income. Ultimately, the onus is on the taxpayer to prove that such income are foreign sourced and that there is no round tripping of Singapore sourced income and this has to be proved to the satisfaction of the Comptroller.

With the liberalization of the tax rules on taxation of foreign sourced income and Singapore's pro-business tax policy of offering one of the lowest corporate tax rates globally at 18%, as well as the recently abolished estate duty, Singapore will continue to attract foreign entrepreneurs including enterprising individuals and companies to grow their businesses here. 

# Did You Know?

(compiled by Jessica Wong)

## Penal Sections on matters relating to Accounts

### S199 Accounting records and systems of control

- S199(1) Keeping of accounting and other records ("Records") that will sufficiently explain the transactions and financial position of company and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached to be prepared.
- S199(2) Retention of Records for 5 years.
- S199(3) Keeping of Records at registered office or such other places as directors think fit and at all times be open to inspection by directors.
- S199(4) If Records are kept outside Singapore, statements and returns with respect to the business dealt with in the records shall be sent to and kept at a place in Singapore and be at all times open to directors' inspection.
- S199(5) The Court may order that Records be open to inspection by a public accountant acting for a director.

***Non-compliance : Fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months and also to a default penalty.***

### S201 Accounts, consolidated accounts and directors' report

- S201(1A) Profit and loss account shall comply with the requirements of the Accounting Standards and give a true and fair view of the profit and loss of the company.
- S201(3) Directors of every company shall cause to be made out and laid at the Company's AGM, a balance sheet that complies with the requirements of the Accounting Standards and gives a true and fair view of the state of affairs of the company as at end of period to which it relates.
- S201(3A) Directors of a company that is a holding company need not comply with 201(1) and 201(3) but must cause to be made out and laid at the Company's AGM, consolidated accounts dealing with the profit & loss and a balance sheet dealing with the state of affairs of the holding company and its subsidiaries at end of financial year.
- S201(15) Every balance sheet and profit & loss account laid before a company in general meeting shall be accompanied by a signed statement by the directors stating whether in their opinion, the profit & loss account and, where applicable, the consolidated profit & loss account and the balance sheet are drawn up so as to give a true and fair view and at the date of the statement, there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due.

***Non-compliance : Any director of a company who fails to comply shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.***

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(con't from pg 3)

**Non-compliance : Any director who fails to comply, fails to take all reasonable steps to secure compliance by the company or has by his own willful act caused the default, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.**

**If an offence under this section is committed with intent to defraud creditors of the company or creditors of any other person or for a fraudulent purpose, the offender shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both.**

- 201(1) Director shall, at a date not later than 18 months after incorporation and subsequently at least once in every calendar year at intervals of not more than 15 months, lay before the company at its AGM, a profit and loss and balance sheet not more than 6 months before date of meeting.
- S201(3C)(a) Directors shall take reasonable steps to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known debts to be written off and adequate provision to be made for doubtful debts.
- S201(3C)(b) Directors shall take reasonable steps to ascertain whether any current assets are unlikely to realize in the ordinary course of business their value and if so, to cause those assets to be written down to an amount which they might be expected so to realize or adequate provision be made for the difference between the amount of the value and the amount they might be expected so to realize.
- S201(3C)(c) Directors shall take reasonable steps to ascertain whether any non-current asset is shown in the books for the company at an amount which having regard to its value to the company as a going concern, exceeds the amount which would be recoverable over its useful life or on its disposal and to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading by reason of the overstatement of the amount of that asset.
- S201(4A) Directors shall take reasonable steps to ensure that the accounts are audited not less than 14 days before the AGM and shall cause to be attached to those accounts the auditors' report.
- S201(5) Directors shall cause to be attached to every balance sheet a report made in accordance with a resolution of the directors and signed by not less than two of the directors with respect to the profit or loss of the company for the financial year and the state of the company's affairs as at the end of the financial year.

**Non-compliance : Any director who fails to comply, fails to take all reasonable steps to secure compliance by the company or has by his own willful act caused the default, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.**

**If an offence is committed with intent to defraud creditors of the company or creditors of any other person or for a fraudulent purpose, the offender shall be liable on conviction, to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years or both.**

### S203 Members of company entitled to balance sheet

- S203(1) Profit & Loss account and Balance Sheet shall be sent to all persons entitled to receive notice not less than 14 days before the date of the meeting.
- 203(2) Any member of a company shall on a request being made by him to the company, be furnished without charge a copy of the last profit and loss account and balance sheet.

**Non-compliance : If default is made, the company and every officer who is in default, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty. **BSL****

#### Writer's Caveat

These articles have merely attempted to provide a broad overview on the subject matters. It is not in any way intended to be comprehensive and no specific action should be taken on the basis of the above without consulting your professional advisors.

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**BSL Corporate Services Pte Ltd** (Company Reg. No. 199705883C)  
220 Orchard Road #05-01 Midpoint Orchard  
Singapore 238852  
Tel: 65 6235 3388 Fax: 65 6235 3178  
Email: main@bslcs.com.sg URL: <http://www.bslcs.com.sg>

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