ผนวก ง

Basic tax concepts[1]

¶2-100 Tax jurisdiction

Income tax, as the name implies, is a tax on income. Before any income is liable to tax in a country, it must fall within the country's tax net. The extent of each country's tax net is determined by the country's tax legislation. It is a generally accepted principle of international tax law that every country has the right to levy tax if there is a reasonable nexus or link between the country and the taxpayer, property or the transactions it seeks to tax.

Broadly speaking, there are two tax systems; namely, the "worldwide" and the "pure territorial" tax systems. Under the worldwide tax system, a country would tax its residents on all their income regardless of whether the source of income is in or outside that country. Countries like the United States of America have even extended the worldwide system to its citizens who are not tax residents. Under a pure territorial tax system, a country would only tax income sourced within that country. Some countries tax foreign-sourced income only if it is received in the country.

In Singapore, the extent of the Singapore tax net is set out in the charging sec 10 of the *Income Tax Act (Cap 134, 2004 Revised Ed)* (the "Act") which states that tax shall be imposed on the income of any person "accruing in or derived from Singapore or received in Singapore from outside Singapore". This phrase in effect sets out the two bases of taxation in Singapore, *viz*, territorial and remittance. Under the *territorial* basis (based on the words "accruing in or derived from"), income is liable to Singapore tax if the source of the income is in Singapore. Under the *remittance* basis (based on the words "received in Singapore from outside Singapore"), income having a source outside Singapore is liable to Singapore tax only if it is accrued in, derived from or received in Singapore, unless specifically exempt from tax. For example, income accruing in or derived from employment exercised in Singapore for 60 days or less during the calendar year by a non-resident individual is exempt from tax (sec 13(6)).

[1] Angela Tan & Tan How Teck, Singapore Master Tax Guide, (Singapore:Seng Lee Press Pte Limited,2006)pp.11-19.

¶2-200 Tax entities

The term "person" has been defined to include a company, a body of persons and a Hindu joint family (sec 2). A body of persons means "any body politic, corporate or collegiate, any corporation sole and any fraternity, fellowship or society of persons whether corporate or not corporate but does not include a company or a partnership" (sec 2). Hence, the following persons would be subject to tax if they have income liable to tax in Singapore:

- an individual;
- a Hindu joint family;
- a company incorporated or registered in Singapore or elsewhere;
- a trustee;
- an executor;
- a club; and
- an association.

A partnership has been specifically excluded from the definition of a "body of persons" in sec 2(1) and hence is not a tax entity. Partners are taxed, either in their own capacity as individuals or as corporate partners, on their proportionate share of partnership income. Similarly, a sole-proprietor is taxed in his or her own personal capacity on the profits from his or her business. A limited liability partnership (LLP) is legally a body corporate but administratively is treated as a partnership for income tax purposes. That means that partners of an LLP will be chargeable with tax on his, her or its (in the case of a company) share of the income from the LLP.

¶2-300 Income — Statutory, assessable and chargeable

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

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

A person is allowed to deduct qualifying expenses incurred in the production of the income. Where a person carries on a trade, business or profession, he or she can claim capital allowances on capital expenditure incurred on the provision of plant or machinery for the purposes of that trade, business or profession. Where a person carries on a qualifying trade, he or she can claim industrial building allowances on capital expenditure incurred on the construction or the purchase of a building or structure occupied for the purpose of that trade. Allowable deductions and capital allowances are discussed in chapters 7 (at ¶7-100ff) and 8 (at ¶8-100ff).

Income tax is imposed at applicable tax rates (see ¶2-700) on the chargeable income of a person. Chargeable income is essentially the taxable income upon which the tax rate is applied. Before defining chargeable income, one has to look at the meaning of two other terms that are used in the Act, *viz*, "statutory income" and "assessable income".

The statutory income of a person for any year of assessment shall be the aggregate of his or her income from each source for the year preceding the year of assessment. Statutory income, which would include foreign income received in Singapore but exclude exempt income, is arrived at after deducting expenses allowable against each source of income and applicable capital allowances.

Assessable income (sec 37(1)) is the remainder of statutory income after deducting any loss incurred in trade, business, profession or vocation, and qualifying donations specified in sec 37(3).

A person's chargeable income for any year of assessment has been defined as the remainder of his or her assessable income after reliefs and deductions allowed in Part X of the Act (sec 38). Note that these reliefs and deductions (see chapter 12 at ¶12-100ff) are available only to individuals and Hindu joint families resident in Singapore. This would mean that the chargeable income of a person other than an individual or a Hindu joint family resident in Singapore would be synonymous with its assessable income.

BASIS OF ASSESSMENT

¶2-410 Year of assessment, basis period and preceding year basis

The Singapore income tax system is annual in its structure and organisation. The statutory tax year in which income tax is calculated and charged is commonly known as the *year of assessment*. Each year of assessment begins on 1 January and ends on 31 December. For example, the year of assessment 2006 runs from 1 January 2006 to 31 December 2006.

The *basis period* for a year of assessment has been defined to mean "the period on the profits of which tax for that year falls to be assessed" (sec 2). Note that the basis period for any year of assessment is the immediate preceding year. For example, the basis period for the year of assessment 2006 is the period from 1 January 2005 to 31 December 2005.

Singapore adopts the *preceding year basis of taxation* for all sources of income (sec 35(1)). The income chargeable to tax for any year of assessment is based on the amount of income accrued in or derived from Singapore or received in Singapore from outside Singapore in the year preceding the year of assessment (ie basis year). Hence, the income for the year of assessment 2006 is not the income for the year 2006 but income earned in the basis period 1 January 2005 to 31 December 2005.

> **Example 1**
>
> Mr Ho has total income of $54,000 from employment, dividends and interest for the period 1.1.05 to 31.12.05. The income of $54,000 (referred to as the statutory income) will be regarded as income that is subject to tax for the year of assessment 2006

The strict preceding calendar year basis is applied for all income including income from trade, business, profession or vocation (collectively referred to as "trade income"). However, for businesses whose accounts are made up to a date other than 31 December, they are allowed to adopt the accounting year basis of taxation for their trade income (see ¶2-420). The preceding calendar year basis remains to be applied on non-trade income unless an administrative concession is granted. This would mean that non-December year-end businesses with non-trade income would need to keep track of their non-trade income and to reconcile the amount of non-trade income reported on their tax returns with the amounts in the books of accounts.

Administrative concession

To facilitate reporting and to minimise the need for reconciliation, an administrative concession has been granted to the following entities regardless of whether they are carrying on a trade or business for their non-trade income to be taxed on the accounting year basis for the year of assessments 2005 to 2008:

- companies;
  bodies of persons (eg clubs, charities, associations, etc);
- sole-proprietorships; and
- partnerships.

The exception to this concession is that Singapore franked dividends (see chapter 10 at ¶10-100ff) continue to be assessed under the preceding calendar year (IRAS e-Tax Guide 2004/IT/7 published on 21 July 2004).

The entity can elect for the non-trade income to be assessed under the accounting year basis simply by preparing its tax computation of its non-trade income other than Singapore franked dividends on an accounting year basis for that year of assessment. Once such an election is made, it cannot be revoked.

From the year of assessment 2009 onwards, it will be provided for under the law that all non-trade income would be assessed under the accounting year basis.

¶2-420 Accounting year basis

Where a person carrying on a trade, business, profession or vocation prepares its annual accounts to a date other than 31 December, and the Comptroller of Income Tax ("Comptroller") is satisfied that the accounts are made up to that date regularly, that person is allowed to adopt the financial year as the basis period. In other words, the profits of the accounting year ending in the preceding year will form the basis for assessment for the current year of assessment (sec 35(4)).

The accounting year basis is applicable only to income derived from trade, business, profession or vocation. Where a person has both trade income and non-trade income, the non-trade income is to be assessed under the calendar year basis unless that person has elected for the non-trade income (other than Singapore franked dividends) to be assessed under the accounting year basis (see ¶2-410 under *Administrative concession*).

¶2-430 Different basis periods

It is possible for a taxpayer to have more than one basis period for a particular year of assessment because he or she has more than one source of income. Nevertheless, for assessment purposes, the total income derived from different basis periods will be combined to form the statutory income for that year of assessment.

There are further departures from the strict "preceding year basis" in situations when a source of income either commences on a date other than 1 January and/or ceases on a date other than 31 December. Consequently, where there is commencement and/or cessation of a source of income during the year, different basis periods will apply although the general principle governing the "preceding year" basis is not disturbed. This is explained in the following paragraphs.

When an individual commences an employment, he or she is said to have commenced a new source of income. When he or she ceases the employment permanently, the employment source is deemed to have ceased. Similar commencement and cessation of sources of income can apply to income from trade, business, profession or vocation, dividends, rental income, etc.

¶2-500 Change of accounting date

An existing trade, business or profession that has been filing its annual income tax returns on the basis of an established accounting date can change its accounting date if it so desires. No prior approval is required from the Comptroller. The change may be for various reasons. It may be a result of the statutory provisions relating to companies or partnerships, a re-organisation of a group of companies, the acquisition of another company or firm which has a different accounting date, management decisions, or any other commercial reason. In some cases, it may well be for tax considerations, ie obtaining a tax advantage. In order to benefit from the loss-transfer system of group relief that has been implemented from the year of assessment 2003, companies may need to change their accounting date (this is further elaborated in chapter 9 at ¶9-100ff).

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

The Comptroller's discretion to compute the statutory income is confined to three years of assessment; the "failure" year and to the following two years of assessment. The "failure" year is the year in which the taxpayer fails to make up its accounts to the usual accounting year-end date.

Example 5 explains how the Comptroller would generally exercise his discretion for trade, business and profession, which commenced after 1968. You will note that there is no "fall out" or double taxation of profits as the total profits made over the period of change would equal to the total profits brought to charge.

Note that the Comptroller would exercise his discretion differently for trade, business and profession that commenced before 1 January 1969. This is because the basis of assessment for the commencing years was based on laws in existence prior to 1969. The preceding year basis of assessment came into effect in 1969.