ผนวก จ

The Charging section[1]

¶3-100 Introduction

Income is not defined in the *Income Tax Act (Cap 134, 2004 Revised Ed)* (the "Act"). An item is liable to income tax if it falls within the charging provisions of sec 10(1). Singapore does not have a capital gains tax and only receipts of a revenue nature are taxable. Thus, the distinction between a capital receipt and a revenue receipt is important.

Section 10 provides that:

> "Income tax shall . . . be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in or derived from Singapore or received in Singapore from outside Singapore in respect of:
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> (a) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;
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> (b) gains or profits from any employment;
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> (c) (Deleted by Act 29/65);
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> (d) dividends, interest or discounts;
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> (e) any pension, charge or annuity;
>
> (f) rents, royalties, premiums and any other profits arising from property; and
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> (g) any gains or profits of an income nature not falling within any of the preceding paragraphs."

Section 10(1) has essentially two limbs. First, for income to be taxable in Singapore, it must have accrued in or been derived from Singapore. Second, foreign-sourced income would be taxable in Singapore only if it is received in Singapore. The focus of this chapter is on the charging section, specifically, the meaning of the expressions "accruing in or derived from" and "received in Singapore from outside Singapore". Chapter 4 (at ¶4-100ff) examines the taxation of income under sec 10(1)(a), chapter 5 (at ¶5-100ff) examines employment income and pensions, and chapter 6 (at ¶6-100ff) examines all the other types of income.

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[1] Angela Tan & Tan How Teck, Singapore Master Tax Guide, (Singapore:Seng Lee Press Pte Limited,2006)pp.35-39.

¶3-200 "Accruing in or derived from"

The income must have a source in Singapore. Based on *CIR v Kirk* [1900] AC 588, the term "derive" has the same meaning as "accruing in" or "arising".

In the Australian case of *Nathan v FC of T* 25 CLR 183, the determination of the source of an income is said to be a practical, hard matter of fact. In the South African case of *CIR v Lever Bros & Unilever Ltd* (1946) 14 SATC 1, "source" was defined to mean the originating cause. To determine this originating cause, two questions need to be asked:

(a) What is the originating cause of the income?

(b) Is the originating cause located in the taxing jurisdiction?

The expression "accruing in or derived from" not only sets out the territorial scope of Singapore's tax system but it also determines the point in time when the income is to be taxed.

In both the local cases of *MPD Pte Ltd v Comptroller of Income Tax* (1998) MSTC 5249 and *KE v Comptroller of Income Tax* [2005] SGITBR 4, the taxpayers were property developers. The two cases shed light on the meaning of "accrued" or "derived" in the context of income of developers.

In the *MPD* case, the taxpayer developed a private residential development for sale and the Comptroller sought to tax the taxpayer in accordance with the percentage of completion method the taxpayer adopted in its accounts. Under this method, revenue is recognised as the contract activity progresses, ie as costs incurred in reaching a particular stage of completion are matched with progress payments received at that point. The Board of Review held that, given the various contingencies that the taxpayer may face and the severe statutory limitations imposed on the use of the funds received in the taxpayer's special project account, the taxpayer could not be deemed to have earned (ie derived) any income in respect of the development until the Temporary Occupation Permit (TOP) for such development was issued.

In the *KE* case, the taxpayer sold all the units in its development before the date of issue of TOP. The taxpayer adopted the completed contract method whereby for the year of assessment 1999, 85% of the costs of construction and allowable expenses (the "costs") incurred up to 30 June 1998 in relation to the development were deducted from 85% of the sales proceeds for all the units. For the year of assessment 2000, 15% of the costs incurred up to 30 June 1998 were deducted from the remaining 15% of the sales proceeds. The Comptroller sought to tax, for the year of assessment 1999, on the basis that 100% of the costs were to be deducted from 85% of the sales proceeds; for the year of assessment 2000, none of the costs were to be deducted from the remaining 15% of the sales proceeds. The Board ruled in the taxpayer's favour.

In *KE*, the Board explained that the Board in *MPD* was merely stating that no income could be derived until the TOP issue in light of the contingencies and limitations on the use of the funds in the project account; the Board in *MPD* was not setting out a general principle that all the income from the development is treated as derived when TOP is issued. In *KE*, there were substantial contractual obligations (under the sale and purchase agreements entered into with the purchasers of the units) that the taxpayer had yet to perform as at TOP date, such as full completion of all building works, the obtaining of the certificate of statutory completion with respect to the units and the rectification of any defects. Under the agreements, the purchasers were to make progress payments to the taxpayer at various stages of construction such that the taxpayer would be entitled to receive 85% of the sales proceeds at the time the TOP was issued. The remaining 15% of the sales proceeds would be due and payable to the taxpayer only after the year of assessment 1999. The Board therefore held that only 85% of the sales proceeds should be deemed to have accrued to the taxpayer at TOP date. The remaining 15% of the sales proceeds should be deemed to have accrued to the taxpayer only after the certificate of statutory completion for the units was issued.

On the second, separate issue in *KE* relating to the deductibility of costs, counsel for the taxpayer contended that the words "gains or profits" in sec 10(1)(a) mean "gross profits" after deducting only the costs of sales, and only then are the allowable expenses under sec 14(1) be deducted from such "gross profits" to arrive at the taxable "net profits" (see chapter 7 on Deduction at ¶7-100ff). The Board rejected this contention. The Board took the view that sec 10(1)(a), as well as sec 10(1)(b) and 10(1)(g), refer to "gains or profits" whereas sec 10(1)(d) and 10(1)(e) do not because the former categories of income are derived from a certain degree of exertion or activity whereas the latter categories are "passive-sourced" income. Nevertheless, the Board endorsed the completed contract method, holding that it should be applied entirely, and not only until the issue of TOP and thereafter completely abandoned. The Board therefore ruled that corresponding deductions of 85% and 15% of the costs were allowable (against the 85% and 15% of sales proceeds) for the years of assessment 1999 and 2000 respectively (see also chapter 7 on Deductions at ¶7-100ff).

Deemed-source provisions

Section 12 contains provisions that deem the source of certain types of income to be in Singapore. These types of income include the business profits of a non-resident person, the income of non-resident owners/charterers of ships or aircraft, income of non-resident persons from cable or wireless undertakings, employment income, interest, royalties or other payments, technical assistance fees, management fees and rent for movable property (see chapters 5 (at ¶5-100ff), 6 (at ¶6-100ff) and 13 (at ¶13-100ff)).

Whether a non-resident person derives trading income from Singapore depends on whether the person is trading in Singapore or trading with Singapore. This distinction is based on the UK case law and is explored in chapter 4 (at ¶4-100ff).

Certain types of income may be exempt under the Act. Similarly, income from qualifying activities may be exempt under the *Economic Expansion Incentives (Relief from Income Tax) Act (Cap 86, 2001 Revised Ed)* (the "EEIA"). For example, pursuant to sec 13(6) of the Act, income arising from employment exercised in Singapore for 60 days or less during the calendar year by a non-resident individual is exempt from tax. On the other hand, pioneer income is exempt under the EEIA. Exempting provisions are further discussed in chapters 4 (at ¶4-100ff), 5 (at ¶5-100ff), 6 (at ¶6-100ff) and 19 (at ¶19-100ff).

¶3-300 Meaning of "received"

Foreign-sourced income is taxable in Singapore only if such income is received in Singapore and not tax-exempt. Before sec 10(25) (previous sec 10(19), *2001 Ed*) was enacted, there was considerable dispute on the exact scope of this second limb of sec 10(1), including the following issues:

(a) It was not clear whether a receipt would be a receipt of income from abroad, if the source that gave rise to the receipt in the first place has ceased.

(b) Under Indian case law, the "doctrine of first receipt" meant that if a person has received a sum of money as income abroad, the individual could no longer receive any part of the money in India as income again. The argument is that a "receipt" implies two parties, and a person who merely remits the foreign income from abroad could not have received it as income from himself. Opinions differed as to whether this doctrine would apply in Singapore.

(c) There had been doubts as to whether a receipt would include a remittance or a transmission.

(d) It appeared that some taxpayers tried to bring into Singapore capital assets acquired out of income derived abroad. The objective of such conversions was to avoid falling into the second limb of the charging section.

For the avoidance of doubt, sec 10(25) clarifies that the following amounts would be regarded as "income received in Singapore from outside Singapore" regardless of whether the source from which the income was derived has ceased:

(a) any amount from any income derived from outside Singapore which is remitted to, transmitted or brought into, Singapore;

(b) any amount from any income derived from outside Singapore which is applied in or towards satisfaction of any debt incurred in respect of a trade or business carried on in Singapore; and

(c) any amount from any income derived from outside Singapore, which is applied to purchase any movable property which is brought into Singapore.

Administrative practice

In applying sec 10(25) (previously sec 10(19), *2001 Ed* and sec 10(15), *1996 Ed*), the IRAS will adopt the following administrative practice (IRAS e-Tax Guide (1995/IT/5) published on 28 December 1995):

(a) Section 10(25) will be applied to tax foreign income belonging to a resident individual or to an entity which is located in Singapore only if such income is received in Singapore. Non-resident individuals and foreign businesses which are not operating in or from Singapore can therefore bring their foreign income to Singapore without fear of being taxed on the income. Hence, they will not be discouraged from using Singapore's banking and fund management facilities.

(b) Individuals who migrate to Singapore will not be taxed on foreign income received in Singapore if the foreign income received after such individuals take up residence in Singapore was earned before their relocation to Singapore. Thus, foreigners will not be disadvantaged in any way as a result of their move.

(c) Foreign income that is reinvested overseas without being repatriated to Singapore will not be treated as having been received in Singapore at the point of reinvestment. This concession is in line with Government's efforts in promoting regionalisation of Singapore's businesses.

(d) Taxpayers may have funds outside Singapore, which are derived from both foreign income and other non-income sources. If they wish to remit the non-income funds only, the IRAS may accept such claims subject to certain conditions. The taxpayer must provide an account of the funds from income and non-income sources on the date before repatriation and show that after the repatriation, the funds remaining outside Singapore is no less than the amount from income sources which have not been repatriated. Alternatively, the taxpayer can show that the amount repatriated is not more than the capital sent out net of any capital losses. This alternative will reduce the need for taxpayers to track and show that the funds repatriated are from non-income sources. Additionally, for the purpose of determining the amount of foreign income which has been derived overseas, the IRAS will allow revenue losses incurred overseas to be set off against the foreign income derived as it recognises that not all overseas projects are profitable.