The above IRAS concession applies to a foreign employee but not a company director or a public entertainer. It also does not apply to an individual who is exercising a profession under s 10(1)(a) (source: IRAS' website).

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.

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, for example, 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. 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. 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 is exercised in Singapore (s 2(1)). The term "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 is 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:

(i) whether the company is to cease operations entirely

(ii) what the company's business will be

(iii) whether and when a dividend is to be declared, and

(iv) whether a merger or acquisition is to go ahead.

The location where the central management and control of a company is 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] 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).

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 is 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:

(i) not even holding any meetings in exercise of those functions, or

(ii) 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).

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 is exercised in Singapore. Conversely, a Singapore-incorporated company will be non-resident if the control and management of its business is exercised ourside Singapore.

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 corporare residence.

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

(i) only a Singapore resident company may pay an exempt one-tier dividend, while a non-resident company pays a foreign dividend (see Chapter 10 at ¶10-100ff)

(ii) only a Singapore resident company qualifies for tax treaty benefits, such as the reduction or exemption of tax on income arising in the treaty country

(iii) only a Singapore resident company qualifies for the foreign-sourced income exemption under s 13(8) (see Chapter 14 at ¶14-100ff)

(iv) certain types of income paid to a non-resident company (but not to a resident company) are subject to withholding tax (see Chapter 13 at ¶13-100ff), and

(v) only a Singapore resident company qualifies for the enhanced tax exemption for new companies (see ¶2-900).

CPF contribution rate	Employee (aged not more than 50 years)		Employee (aged above 50 to 55 years)	
	Employer	Employee	Employer	Employee
From 1 September 2010 to 28 February 2011	15%	20%	11%	18%
From 1 July 2007 to 30 August 2010	14.5%	20%	10.5%	18%

Example 7

In 2016, Michael Ker's monthly ordinary wages are $8,000. He is 45 years old. The statutory monthly CPF contribution to be made by his employer will be:

17% × $6,000 = $1,020

If his additional wages (eg comprising a year-end bonus) of $40,000 were paid in December 2016, the statutory CPF contributions on additional wages would be $5,100 (ie 17% × $30,000 ($102,000 – $72,000).

CPF contributions by more than one employer

Where:

(i) CPF contributions have been made in respect of an employee employed by two or more employers, and

(ii) the employers are related to each other,

all the ordinary and additional wages from the related employers and the contributions on those wages are treated as paid by one employer for purposes of determining the amount of excess CPF contributions (s 10C(8)).

An employer is deemed to be related to another employer if one of them, directly or indirectly, is able to control the other or if both of them, directly or indirectly, are under the control of a common person (s 10C(9)).

Medisave contributions

Up to 2012, annual contributions up to $1,500 made by an employer to the CPF Medisave account of an employee will not be deemed income to the employee (s 10C(4)). Where two or more employers make Medisave contributions to the same individual in a year, the maximum amount of Medisave contributions not deemed to be income to that employee for that year is restricted to $1,500.

From 1 January 2011, the annual cap of $1,500 above includes:

(i) any previous contribution made by the same or another employer to that Medisave account in that year that is not deemed income under s 10C(4), and

(ii) any previous voluntary contribution in cash made to that Medisave account in that year as a self-employed individual that is tax exempt under s 13(1)(jc).

All contributions made to the Medisave account of any employee holding a professional visit pass, employment pass or work permit are fully taxable to the employee (s 10C(6)).

From 2013, annual contributions up to $1,500 less any previous contribution made to the Medisave account of an employee by an employer in his capacity as a person of a prescribed description referred to in s 13(1)(jd) (if applicable) that is exempt from tax in s 13(1)(jd) will not be deemed income to the employee (s 10C(5A) and 10C(5B)).

Certain contributions to CPF made by Government

Certain CPF contributions made by the Government in respect of an individual are tax exempt (see Chapter 6 at ¶6-950).

Employer's excess CPF contributions

Due to the exemption given in s 13(1)(j), employers in the past made CPF contributions for their employees in excess of CPF statutory rates to minimise the employees' tax liability. Section 10C was enacted to close this tax loophole by treating excess CPF contributions as taxable income for the year the wages are paid. Section 10C applies also to excess contributions made to an ADPPF.

Notwithstanding the s 13(1)(j) exemption for sums standing to the employee's CPF account or withdrawn therefrom, the following CPF contributions made by an employer in respect of an employee are deemed income to the employee for the year in which the wages are paid:

(a) any part of the employer's contributions in respect of ordinary or additional wages paid to the employee in that year, which is not obligatory under the CPF Act, or

(b) the employer's contributions in respect of that part of the additional wages which exceeds the specified amount paid to the employee in that year (s 10C(1)).

The CPF monthly salary ceiling has been raised from $5,000 to $6,000 from 1 January 2016. From the year 2016, the specified amount is therefore be $102,000 (being $6,000 × 17) minus the total ordinary wages paid to the employee in that year; any amount of ordinary wages paid for any month in the year in excess of $6,000 will be disregarded.

If, in Example 7, Michael's employer contributed monthly CPF based on the full salary (ie ordinary wages) of $8,000, the excess CPF contributions of $4,080 (ie 17% × (12 × $2,000)) would be deemed income to Michael for 2016 (s 10C(1)).

If Michael's employer also contributed CPF on the full amount of his bonus (ie additional wages) of $40,000 in December 2016, the excess CPF contribution of $1,700 (ie 17% of ($40,000 – $30,000)) would also be deemed income to him for 2016.

Block basis concession

Where the rental income is taxable under s 10(1)(f), the rental income or loss from each property is in principle determined separately. The Act does not allow the set-off of s 10(1)(f) rental loss from one property against the s 10(1)(f) income from another rental property or any other income.

Example 2

If property A produces rental income of $4,000 but property B produces rental loss of $1,000 (both s 10(1)(f) sources), the rental loss of $1,000 would be disregarded and the taxable rental income would be $4,000.

In practice, the IRAS adopts the block basis concession. Under this concession, the s 10(1)(f) rental income or loss from all rental properties of the taxpayer will be aggregated to determine the overall net rental income or loss for that year. The "block" of properties refers to rental-income-producing properties. If a net rental loss results after applying the block basis concession, it cannot be set off against other sources of income for the same YA. Nor can it be carried forward for set-off against the statutory income of a future YA.

Note that from YA 2005, in the context of husband and wife both having rental income, a spouse is allowed to transfer a rental deficit to the other spouse, ie the rental deficit of the transferor will be set off against the rental income of the transferee (see s 37D, IRAS e-Tax Guide "Change to Assess the Income of a Husband and Wife as Separate Individuals", last revised on 26 May 2014, and Chapter 12 at ¶12-100ff). The ability to transfer a rental deficit between spouses will no longer be available from YA 2016.

Example 3

Assume that properties A and B were rented out for the whole year and that the rental was a s 10(1)(f) source of income. Property A was vacant for the period 1 June to 31 July; the net rental income from it was $27,000 after applying the IRAS continuing source concession. Property B was let out for the whole year, and the net rental loss was $38,000.

As shown below, the block basis concession will give a more favourable result to the taxpayer than the strict position.

	Strict position	*Block basis concession*
	$	$
A: net rental income	27,000	27,000
B: net rental (loss)	disregarded	(38,000)
Net rental income/(loss)	27,000	Nil*

* The resultant rental loss of $9,000 is a s 10(1)(f) loss and therefore disregarded for tax purposes.

Deduction for expenditure by individual deriving passive rental income

Under current tax treatment, an individual who derives passive rental income from a residential property in Singapore can, subject to income tax rules, claim against such income a deduction of the actual deductible expenses incurred in producing the income. To substantiate his claims for deduction, he is required to keep the relevant records for a period of at least five years from the YA to which the claims relate (see Chapter 7 at ¶7-100ff and Chapter 17 at ¶17-000ff for details).

To simplify tax compliance, an individual who derives passive rental income (ie under s 10(1)(f)) in the basis period for YA 2016 or a subsequent YA from the letting of a residential property in Singapore (referred to as "qualifying rental income") can claim the rental expenses (excluding interest) based on 15% of the gross rental income in lieu of the actual amount of deductible expenses (excluding interest) (s 14Y, proposed in the *Income Tax (Amendment) Bill 2016*). He can continue to deduct any actual amount of interest expense against the qualifying rental income. This takes effect from YA 2016.

The proposed s 14Y basis of deduction does not apply to any rental income derived:

(a) by an individual who has elected for it not to apply to all of his rental income derived in the basis period for the YA concerned (if such an individual derives rental income from two or more residential properties, the election to opt out, if made by him, will apply to all of the properties)

(b) by an individual through a partnership in Singapore, and

(c) by an individual acting in the capacity of a trustee of a trust.

In this context, "residential property" means any building, flat or tenement in Singapore, or any part of such building, flat or tenement, principally used for residential purposes. But if any building, flat or tenement or any part of each of them is used for any period as a chalet, child care centre, welfare home, hospital or workers' dormitory (among others) and for which planning permission has been given by the relevant authority, then it is not "residential property" for the duration of that period of use (s 14Y(6), (7), proposed in the *Income Tax (Amendment) Bill 2016*).

ROYALTIES

¶6-700 Definition

The Act does not define the term "royalties". The ordinary meaning of a royalty is that it is a payment for the use of a patent, copyright or other intellectual property on a per unit basis. For example, an agreement may provide that a royalty is payable for every book or Video Compact Disc (VCD) sold.

The term "royalties" is sometimes used in a broader sense to include payments for the use of knowledge or information that falls short of property but that is protected as confidential information, such as secret processes. Such payments are called know-how payments. They are typically included in the definition of "royalties" in the "Royalties" article in Singapore's tax treaties (see Chapter 14 at ¶14-210 and ¶14-530).

Liberalised tax treatment for repatriated foreign income

Where expenses are incurred in the production of foreign income that is not repatriated to Singapore, they are not deductible because there is no income chargeable with tax. A strict interpretation of s 14(1) requires a matching of the expenditure incurred with the receipt of foreign income in Singapore. Expenses incurred in the production of income that is not repatriated to Singapore within the same year are therefore not allowed to be carried forward to set off against the foreign income repatriated in subsequent years.

A person deriving foreign income may, in certain cases, have genuine reasons for not repatriating his foreign income to Singapore. As a concession, with effect from YA 1996, allowable expenses incurred in Singapore to produce foreign income that is not repatriated to Singapore in the same year, may be carried forward and deducted against the foreign income when it is repatriated in subsequent years.

The following conditions apply:

- in the case of allowable expenses incurred to produce foreign investment income (eg foreign dividends), only allowable expenses incurred on income-producing investments may be carried forward for set-off (an investment is regarded as "income-producing" from the date it commences to produce income if it continues to be held for the purposes of earning income), and

- to qualify to be carried forward for set-off, the expenses must not have already been claimed as a deduction in the foreign tax jurisdiction (the Inland Revenue Authority of Singapore (IRAS) may require an external auditor's certificate to this effect before allowing a deduction).

(See IRAS e-Tax Guide "Liberalised Treatment of Expenses Incurred in Singapore to Derive Foreign Income", published on 10 October 2014.)

The IRAS provides the following two methods for computing the amount of expenses that can be deducted against foreign income repatriated in any year:

- *Direct method* — This method requires detailed accounting of the expenses and the corresponding income for each year. In any year that foreign income is repatriated to Singapore, the actual expenses that were incurred to earn the foreign income will be allowed as a deduction.

- *Indirect method* — Under this method, the allowable expenses and the non-repatriated foreign income are aggregated. In any year that foreign income is repatriated to Singapore, the allowable expenses are computed by the formula:

$$\frac{A}{B} \times C$$

where:

A = the amount of foreign income repatriated to Singapore in the year

B = the aggregate of the foreign income derived during the liberalised tax treatment period up to and including the year concerned which has yet to be repatriated to Singapore plus "A"

C = the aggregate of the allowable expenses incurred to produce foreign income during the liberalised tax treatment period up to and including the year concerned which has yet to be allowed as a deduction against foreign income repatriated.

Further administrative details and specific applications relating to the election and revocation of this liberalised tax treatment can be found in the IRAS e-Tax Guide "Liberalised Treatment of Expenses Incurred in Singapore to Derive Foreign Income", published on 10 October 2014.

¶7-330 Wholly and exclusively

"Wholly" refers to the quantum of the expenditure (ie the sum of money spent) and "exclusively" has reference to the motive or object behind the expenditure (*Romer* J, in *Bentleys, Stokes and Lowless v Beeson* (1952) 2 All ER 82 at 85).

More than one motive

Generally, where the expenditure is incurred for the sole objective of income production and some other objectives inherent in the business activity necessarily result or are also attained, the expenditure will not be disqualified. Difficulty arises, however, when an activity is undertaken with more than one motive. For example, an activity could be undertaken with the object of both promoting business and some other purpose (eg indulging in an independent wish to entertain a friend or stranger, supporting a charitable or benevolent object, etc). Although the taxpayer may think that the business motive predominates, the expenditure still fails the "wholly and exclusively" rest. Thus, the taxpayer's intention for incurring the expenditure is an important consideration.

Subconscious personal motive

It is generally accepted that where a taxpayer's intention behind an expense is to procure a purely business benefit but an incidental benefit of a personal nature arises, a deduction is allowed. However, where both benefits are present in the taxpayer's mind when he incurs the expense, deduction is not allowed.

The case *Mallalieu v Drummond (Inspector of Taxes)* [1983] STC 665, however, cuts across this accepted tax concept. In that case, a practising lawyer incurred expenditure on the cost of clothes for court wear in accordance with the Bar Council's relevant guidelines. She claimed a deduction for the clothes and other related expenses that included laundering and cleaning expenses. The House of Lords held that while the taxpayer might well only have had the professional purpose in her conscious mind, another object, though not a conscious motive, was the provision of the clothes that she needed as a human being. The expenses were therefore not deductible. The decision would appear to suggest that if there is a conscious business motive and a subconscious personal motive, the whole of the expenditure will not rank for deduction.

Example 17

Assume Company PQR incurred different amounts of qualifying design expenditure which are not deductible under s 14 during the basis period for the following YAs:

Case	A	B	C
YA 2013	$300,000	$550,000	$850,000
YA 2014	$650,000	$400,000	$100,000
YA 2015	$1,000,000	$1,000,000	$1,000,000
Total expenditure	$1,950,000	$1,950,000	$1,950,000

The amount of deductions claimable under s 14S for the relevant YAs is as follows:

	A	B	C
	$	$	$
YA 2013			
400% deduction			
– 400% × $300,000	1,200,000		
– 400% × $550,000		2,200,000	
– 400% × $850,000			3,400,000
Total deductions	1,200,000	2,200,000	3,400,000
YA 2014			
400% deduction			
– 400% × $650,000	2,600,000		
– 400% × $400,000		1,600,000	
– 400% × $100,000			400,000
Total deductions	2,600,000	1,600,000	400,000
YA 2015			
400% deduction			
– 400% × $(1,200,000 – 300,000 – 650,000)	1,000,000		
– 400% × $(1,200,000 – 550,000 – 400,000)		1,000,000	
– 400% × $(1,200,000 – 850,000 – 100,000)			1,000,000
Total deductions	1,000,000	1,000,000	1,000,000
Total deductions for all three years	4,800,000	4,800,000	4,800,000

Example 18

Assume the same Company PQR incurred the following different amounts of qualifying design expenditure which are not deductible under s 14 during the basis period for YA 2016, YA 2017 and YA 2018:

Case	A	B	C
YA 2016	$300,000	$550,000	$850,000
YA 2017	$650,000	$400,000	$100,000
YA 2018	$1,000,000	$1,000,000	$1,000,000
Total expenditure	$1,950,000	$1,950,000	$1,950,000

The amount of deductions claimable under s 14S for the relevant YAs is computed in a similar manner as YA 2013, YA 2014 and YA 2015 in Example 17.

A person can conduct the eligible design project either in-house or outsource the project to an approved service provider. Qualifying design expenditure (s 14S(6)) (net of any grants or subsidies from the Government or a statutory board) incurred on eligible design project is as follows:

(a) in-house project — staff costs of qualified designers incurred for an approved industrial or product design project undertaken in Singapore, and

(b) outsourced project:

(i) the actual amount of staff costs where more than 60% of all payments made to the approved design service provider for the project are staff costs, or

(ii) in all other cases, 60% of those payments.

Industrial or product design means the professional specifications of creating and developing concepts or specifications that improve or enhance the functions, value or appearance of physical products, taking into account the users' needs, marketability and production (s 14S(6)).

Qualifying staff costs are salaries, wages and other benefits, whether in the form of money or otherwise (but excluding director's fees), paid or granted in respect of the employment of any qualified designer which are attributable to the industrial or product design project (s 14S(6)).

This incentive is administered by the DesignSingapore Council.

¶7-840 Overseas investment development expenditure

As an incentive for companies to venture overseas, approved firms or companies resident and carrying on business in Singapore are allowed a further or double deduction for approved overseas investment development expenditure (s 14K). A further deduction is allowed if the expenditure is allowable as a deduction under s 14. Where the expenditure is not deductible under s 14, a deduction double the amount of the expenditure is allowed (s 14K(1)).

Scottish & Newcastle Breweries Ltd

In *IRC v Scottish & Newcastle Breweries Ltd* (1982) STC 296, the company carried on business as hoteliers and operators of licensed premises. It incurred capital expenditure on electric light fittings, electric wiring, décor and murals, and metal sculptures. The wall décor consisted of pictures, plaques, tapestries, plates, horse harnesses, stags' heads, metalware, swords, axes, hagpipes, and deer skins. All these items were either screwed to the wall and easily removed or hung on the wall and movable. The murals were fibre glass, leather or metal sculpture panels that were screwed to the wall and movable. There were two metal sculptures representing seagulls in flight; one of them hung from the ceiling to which it was bolted and was supported by steel rods. The other was a standing fixture permanently fixed to the forecourt. It was held that all these items were plant because the creation of atmosphere was an important function of the trade of a hotelier and was a means to an end in the carrying on of such a trade.

Lord *Wilberforce* said:

> "In the end, each case must be resolved, in my opinion, by considering carefully the nature of the particular trade being carried on, and the relation of the expenditure to the promotion of the trade ... It seems to me, on the Commissioners' findings, which are clear and emphatic, that the taxpayer company's trade includes, and is intended to be furthered by, the provision of what may be called 'atmosphere' or 'ambience', which (rightly or wrongly) they think may attract customers. Such intangibles may in a very real and concrete sense be part of what the trader sets out, and spends money to achieve. A good example might be a private clinic or hospital, where quiet and seclusion are provided, and charged for accordingly. One can well apply the 'setting' test to these situations. The amenities and decoration in such a case as the present are not, by contrast with the *Lyon's* case, the setting in which the trader carries on his business, but the setting which he offers to his customers for them to resort to and enjoy."

Lord *Lowry* highlighted the importance of not equating "setting" with "premises":

> "... the Crown's primary fallacy, in my opinion, was to identify 'setting' inevitably with 'premises' or 'place' ... And even if one assumes that 'the setting' is the same thing as 'the premises', it is fallacious to say that articles used to adorn the setting thereby ceased to be apparatus used by the taxpayer company for carrying on their business ..."

Wimpy International Ltd

In *Wimpy International Ltd v Warland* (1988) 61 TC 51, the taxpayer was an operator of fast food restaurants. It was held that the disputed items, which included shop fronts, floor and wall tiles, false ceilings, floors and stairs were not plant because they formed part of the premises and were not items which merely "embellish" the premises. Only the light fittings were held to be plant.

In the High Court, *Hoffman* J (as he then was) quoted Lord *Lowry* in *Scottish & Newcastle Breweries* [1982] STC 296 at 304:

> "something which becomes part of the premises, instead of merely embellishing them, is not plant, except in the rare case where the premises are themselves plant, ..."

The question of how one applies the "premises" test to items which were not incorporated as part of the original building but have been added by way of subsequent improvement was also considered. The question is whether it would be more appropriate to describe the item as having become part of the premises than as having retained a separate identity. This is a question of fact and degree, to which some of the relevant considerations will be:

- whether the item appears visually to retain a separate identity
- the degree of permanence with which it has been attached
- the incompleteness of the structure without it, and
- the extent to which it was intended to be permanent or whether it was likely to be replaced within a relatively short period.

Applying these principles to the facts in *Wimpy*, *Hoffman* J held that only the light fittings were plant. The Commissioners had found that the taxpayer considered the volume of light important for the purposes of their business and that it had been progressively increased for business reasons. The light fittings could not, therefore, have been for general illumination only but were apparatus used in the trade, ie plant. *Hoffman* J's decision was upheld in the Court of Appeal ([1989] STC 273).

Per *Fox* LJ at 278–280:

> "I would agree with *Hoffman* J that the question is whether it would be more appropriate to describe the item as part of the premises rather than as having retained a separate identity. It seems to me that items such as fixed floor tiles and shop fronts are more naturally to be regarded as part of the 'housing' of the business than as mere embellishments having a separate identity."

Singapore tax cases on "plant or machinery"

ZF v CIT

In *ZF v CIT* (2011) MSTC ¶70-008; [2010] SGCA 48, the Court of Appeal reversed both the decisions of the High Court and the Board of Review and held that portable and demountable pre-fabricated dormitories are "plant" and qualify for CA under s 19 and 19A.

ZF is in the business of providing accommodation on a temporary basis and therefore requires the dormitories facility to be portable or demountable. ZF was awarded a contract to build and operate workers' dormitories on a site leased from the Building and Construction Authority (BCA). The lease agreement was for a period of three years and could be extended for another six years at the discretion of the BCA. The BCA also has the right to terminate the lease by giving a 90-day notice in the event the site was requisitioned for industrial or other use.

In the light of these time constraints, ZF built dormitories that were not permanent structure. They were pre-fabricated structures that could be easily removed and re-used on another location. ZF claimed only the movable parts of the dormitories as "plants" and excluded all expenditure incurred on the permanent structures such as foundational works for the dormitories and a brick building used as a canteen for the workers.

The Court of Appeal held the view that "there is just one basic and overarching test — whether the item concerned is utilised for the purposes of the trade or business as 'plant' or as a building" (building being conceptually mutually exclusive from plant).

Notes:

(1) This is the amount of net profit/(loss) which has to be allocated to the partners in accordance with the partnership profit-sharing ratio.

(2) A partnership agreement may provide that certain personal expenses (eg life assurance premium and leave passages) of partners are to be paid and borne by the firm. In such instance, for the partner concerned, his personal expenses borne by the firm will be regarded as his additional income from the partnership.

Allocation to respective partners

The partnership's divisible profit/(loss) is allocated among the partners who are then assessed in their own names as individuals. Partners' salaries, bonuses and interest on capital, if any, will be allocated to the respective partners.

Capital allowances and donations to approved institutions are allocated to each partner in accordance with the partnership profit-sharing ratio.

Where the partnership derives income from non-trade source, such income will also be apportioned among the partners in accordance with the partnership profit-sharing ratio.

	Mr A	*Mr B*	*Total*
	$	$	$
Salary and bonuses	xxxx	xxxx	xxxx
Interest on capital	xxxx	xxxx	xxxx
Personal expenses	xxxx	xxxx	xxxx
Divisible profit/(loss)	xxxx	xxxx	xxxx
Adjusted profit/(loss) (Note 1)	xxxx	xxxx	xxxx
Income from other sources (Note 2)	xxxx	xxxx	xxxx
CA (Note 3)	xxxx	xxxx	xxxx
Donations allowable under s 37(3)(b)–37(3)(f) (Note 4)	xxxx	xxxx	xxxx

Notes:

(1) The partner's share of the current year's CA is set off against firstly, his share of the partnership's business income and any remaining balance against his other income (s 35(2A)). Where there are unabsorbed CA for a current YA, the partner has the option to transfer the unabsorbed CA to his spouse, to carry back the unabsorbed CA up to a specified amount for set-off against his own assessable income and/or his spouse's assessable income for the immediate preceding YA or to carry forward the unabsorbed CA to the next YA provided the assets are still used in the same trade (s 23(1) and 35(2)). Unless transitional concession applies to unabsorbed CA incurred in and before YA 2015, unabsorbed CA will not be allowed to be transferred to a spouse with effect from YA 2016. Refer to Chapter 9 (at ¶9-100) for more details.

(2) For an adjusted loss, a partner deducts his share of the adjusted loss against his statutory income (s 37(3)(a)). Where the current year's loss cannot be fully absorbed, the unutilised loss can be transferred to the partner's spouse, carried back to the immediate preceding YA or be carried forward indefinitely until relieved. Unless transitional concession applies to unabsorbed business loss incurred in and before YA 2015, unabsorbed business loss will not be allowed to be transferred to a spouse with effect from YA 2016. Refer to Chapter 9 (at ¶9-200) for a detailed discussion.

(3) Where the partner is a company, the shareholders' continuity test has to be satisfied before the unabsorbed CA and/or business losses can be carried back to the immediate preceding YA or be relieved in future years (s 23(4) and 37(12)) (see Chapter 9 at ¶9-400).

(4) Donations are allowed against the partner's statutory income after the deduction of losses. Any unabsorbed donations for the current YA can be transferred to the partner's spouse for that YA or be carried forward for set-off for the next five YAs (s 37(7) and 37(8)). Note that the current year's unabsorbed donations cannot be carried back. Note also that unless transitional concession applies to unabsorbed donations incurred in and before YA 2015, unabsorbed donations will not be allowed to be transferred to a spouse with effect from YA 2016. Where the partner is a company, the shareholders' continuity test under s 37(12) has to be satisfied before any unabsorbed donations brought forward can be utilised. Refer to Chapter 7 (at ¶7-900) and Chapter 9 (at ¶9-300) for more details.

Example 1

Low and Lee are partners in a firm that reported a net loss of $25,000 for the financial year ended 31 December 2015. The only disallowable items, for income tax purposes, charged in the accounts are depreciation of $1,700 and donations of $1,300. The partnership agreement provides that Low and Lee are to be paid an annual salary of $3,600 each and interest on capital amounting to $2,000 for Low and $400 for Lee. The CA are $2,400 and cash donations made to approved institutions are $1,000. The two partners share profits equally.

Partnership tax computation for YA 2016

	$
Net loss per accounts	(25,000)
Add: Depreciation and donations	3,000
Divisible loss	(22,000)
Add: Partners' salaries and interest	9,600
Adjusted loss	(12,400)

The partners' share of loss from the partnership is:

	Low	*Lee*	*Total*
	$	$	$
Salary	3,600	3,600	7,200
Interest	2,000	400	2,400
Divisible loss	(11,000)	(11,000)	(22,000)
Adjusted loss	(5,400)	(7,000)	(12,400)
CA (Note 1)	1,200	1,200	2,400
Donations (Note 2)	1,500	1,500	3,000

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

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

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

The effect of s 40D relief is that the proportionate tax on each of these types of income is reduced to the 15% tax rate but the tax payable on Singapore employment income and the SRS withdrawals cannot be less than that payable by a resident individual under similar circumstances.

¶13-300 Deemed-source provisions

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

(a) gains or profits from trading operations partly carried on by a non-resident person in Singapore (s 12(1))

(b) profits of non-resident operators of ships and aircraft arising from the outward shipment of passengers, mail, livestock and goods from Singapore (s 12(2))

(c) profits of non-resident persons in the business of cable or wireless undertakings where such profits arise from the transmission of messages in Singapore (s 12(3)) (see ¶13-850)

(d) income from employment exercised in Singapore regardless of whether such income is received in Singapore (s 12(4)) (see Chapter 5 at ¶5-110ff)

(e) income from employment exercised outside Singapore on behalf of the Government (s 12(5))

(f) interest and other related payments (s 12(6)) (see ¶13-610)

(g) royalties, know-how and technical service fees, management fees and rental income of movable property (s 12(7)) (see ¶13-615 to ¶13-650), and

(h) commission or other payments of a junket promoter (s 12(8)).

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

Subject to some conditions found in the Press Statement issued by the Ministry of Finance on 21 December 1977, certain kinds of income are treated as not deemed derived from Singapore under s 12(6) and 12(7).

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

Ministry of Finance, 1977 Press Statement

"The *Income Tax Amendment Act 1977* which came into effect on 7 July 1977 introduced certain provisions which have the effect of frustrating tax avoidance schemes in siphoning off Singapore profits, particularly between associated companies in Singapore and outside Singapore. However, some of these provisions have been given more than one possible interpretation, thus giving rise to doubt on the scope and amount of payment to non-residents subject to tax. For the purpose of clarification and ease of administration, where the following services are performed outside Singapore by persons outside Singapore for or on behalf of residents or permanent residents or permanent establishment in Singapore, or even between associated companies, and such transactions are at arm's length and not with intent of siphoning off Singapore income, the Commissioner of Inland Revenue has given the following rulings:

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

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

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

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

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

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

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

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

¶13-400 Withholding tax system

Singapore has a withholding tax mechanism to ensure and facilitate the collection of tax payable from non-residents on some kinds of Singapore-sourced income. In general terms, the obligation to withhold tax applies to payments of certain income (see Table 1), which are either sourced or deemed sourced in Singapore. Subject to conditions, the applicable tax rates for each payment of income (in the absence of any

Method 2: Use of audited accounts of foreign payer company

The IRAS will consider the "subject to tax" condition as met where the foreign payer company's audited accounts for the financial period ending in the year prior to the year when the dividend is received in Singapore show a positive current year tax expense, excluding any deferred tax expense. This method would be suitable for portfolio investors (ie "having less than 100% ownership in the foreign payer company", as stated in the IRAS e-Tax Guide).

Other methods

The taxpayer can also choose any other method if he can prove to the IRAS satisfactorily that the "subject to tax" condition has been met.

(See IRAS e-Tax Guide "Tax Exemption for Foreign-Sourced Income" (2nd Ed), published on 31 May 2013.)

Headline tax rate ≥ 15% (s 13(9)(b))

The headline tax rate of a foreign country refers to the highest corporate tax rate prevailing in that country. It is not necessarily the actual tax rate imposed on that foreign income by the foreign country. As long as the **headline tax rate** of the foreign country is **at least 15%** in the year the specified foreign income is received in Singapore, that foreign income would satisfy this condition for the s 13(8) exemption.

Some foreign tax jurisdictions may have special tax legislation (apart from its main tax legislation) that imposes tax on the specified foreign income. Where the specified foreign income received in Singapore:

(a) is chargeable to tax under the special tax legislation of the foreign tax jurisdiction that is independent of its main tax legislation

(b) the special tax legislation imposes tax at a rate lower than the highest rate applicable to other companies in that jurisdiction under the main tax legislation, and

(c) the application of the lower tax rate is not pursuant to a tax incentive granted for carrying out substantive activities in that jurisdiction (eg special tax legislation enacting incentives for income derived from carrying out manufacturing activities in Special Economic Zones),

the IRAS has clarified that the headline tax rate for s 13(8) exemption purposes would be the highest of the rates stipulated in the special tax legislation instead.

(See IRAS e-Tax Guide "Tax Exemption for Foreign-Sourced Income" (2nd Ed), published on 31 May 2013.)

Tax exemption would be beneficial (s 13(9)(c))

This third condition for the s 13(8) exemption to apply may, at first sight, appear to be redundant. Isn't exemption always beneficial to the Singapore resident person? The answer is no, for at least the following two reasons:

(1) Under some of Singapore's tax treaties, a Singapore resident person may qualify for tax exemption or reduction on income arising in the country of source only if that income is received in Singapore and subject to tax in Singapore.

Claiming s 13(8) exemption on the foreign income received in Singapore would fail such a "subject to tax" condition in the treaty concerned, and it is therefore possible that the person may end up with a bigger amount of total tax payable (ie Singapore tax + foreign tax) by claiming s 13(8) exemption on foreign income in a scenario in which no incremental Singapore tax would have been payable on that foreign income received in Singapore under the credit method anyway (this happens when the Singapore tax payable on the foreign income is less than the foreign tax paid on it, in which case the amount of credit is restricted to the Singapore tax payable) — (see Example 3 and ¶14-350), and

(2) With the introduction of FTC pooling basis from YA 2012, it is possible that where two items of foreign income satisfy the conditions for FTC pooling but only one item satisfies the conditions for s 13(8) exemption, claiming s 13(8) exemption on one item but credit method (source-by-source basis) on the other item may result in a higher tax payable than claiming FTC pooling on both items (see ¶14-365 and Examples 6 and 7).

General tax exemption under s 13(12)

A Singapore resident person who intends to repatriate from any country any foreign income that does not qualify for tax exemption under s 13(8) can apply to the Minister for full or partial tax exemption on the foreign income. The Minister may approve the application if he is of the opinion that the repatriation of the foreign income would help to promote or enhance the economic or technological development of Singapore (s 13(12)). Alternatively, he may grant a concessionary rate of tax on the foreign income instead.

In response to representations from the business community regarding the difficulties of satisfying the s 13(8) "subject to tax" condition, the IRAS has set out six scenarios under which the s 13(12) tax exemption may be granted on the specified foreign income received in Singapore if the following conditions are satisfied:

(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, and

(iii) the taxpayer receiving the income in Singapore is not a shelf company.

Where the foreign income received in Singapore by a taxpayer does not fall within any of the six scenarios, the taxpayer can still make an application under s 13(12) giving reasons why exemption should be granted. Such a taxpayer could be a company or a listed infrastructure registered business trust (RBT) (see also the 2014 Budget announcement below). The IRAS has indicated that exemption would be granted if the repatriation of such income would generate economic benefits for Singapore.

(See IRAS e-Tax Guide "Tax Exemption under Section 13(12) for Specified Scenarios, Real Estate Investment Trusts and Qualifying Offshore Infrastructure Project/Asset" (3rd Ed), published on 19 June 2015.)

When a company transirs inro or applies for its first FSI award, it has to compute an initial QB, which will be the predetermined percentage to be applied to income from ST activities. The resulting QB amount will not qualify for the 10% tax rate but will be taxed at the normal corporate tax rate. The QB is based on rhe income from three YAs prior to the commencement of the FSI activities.

The following companies rhat have been granted the FSI awards are not subject to rhe QB, ie all their income from the qualifying activities is taxed at 10%:

- companies with the FSI-HQ Services award, and
- companies engaged solely in fund management or investment advisory services.

The qualifying FSI activities and criteria given in the MAS Circular FDD Cir 05/2005 (*Details of Financial Sector Incentive (FSI) Scheme*) dated 1 April 2003 are reproduced as the paragraphs below. See the Income Tax (Concessionary Rate of Tax for Financial Sector Incentive Companies) Regulations 2005 for the prescribed qualifying activities and deduction of losses.

Removal of qualifying base

With effect from 1 January 2011, the QB has been removed and the concessionary tax rate of 10% under the FSI-ST award has been changed in tandem to 12%. The list of qualifying activities has also been updated. These changes were introduced to simplify the rules of the FSI scheme and lower compliance costs for the financial institutions.

Further enhancement to the liberalisation of the withholding tax (WHT) exemption regime for banks

Approved banks gazetted under the Act enjoy WHT exemption on interest and other qualifying payments made to their branches or other banks outside Singapore under a remission for inter-bank/inter-branch payments granted under s 92(2). Banks also enjoy various WHT class exemptions on certain payments made to non-bank non-residents relating to specific transactions (eg payments relating to over-the-counter (OTC) financial derivatives, structured products, securities lending, etc).

To facilitate access to a wider range of funding sources for their lending business and strengthen Singapore's position as a regional funding centre, the following enhancements came into effect on 1 April 2011:

(a) The WHT exemption is granted on interest and other qualifying payments falling within the ambit of s 12(6) made to all non-resident persons (excluding permanent establishments (PEs) in Singapore) if the payments are made for the purpose of their trade or business, and

(b) The WHT exemption is extended to:

- banks licensed under the *Banking Act (Cap 19, 2008 Revised Ed)* or approved under the *Monetary Authority of Singapore Act (Cap 186, 1999 Revised Ed)*
- finance companies licensed under the *Finance Companies Act (Cap 108, 2011 Revised Ed)*, and

- approved financial institutions licensed under the *Securities and Futures Act (Cap 289, 2006 Revised Ed)* that engage in lending as part of their regulated activities of dealing in securities in Singapore (such as investment banks).

The WHT exemption covered by the enhancements also applies to:

(a) payments liable to be made during the period from 1 April 2011 to 31 March 2021 on contracts which take effect before 1 April 2011, and

(b) payments liable to be made on contracts which take effect on or aftet 1 April 2011 to 31 March 2021.

A sunset clause with a deadline of 31 March 2021 applies for the enhanced scope of the WHT exemption.

Specified entities are also not required to withhold tax on interest and other payments made to PEs in Singapore. The enhancement takes effect for:

(a) payments to be made from 17 February 2012 to 31 March 2021 for contracts already in force before 17 February 2012, and

(b) all payments arising from contracts effective on or after 17 February 2012 to 31 March 2021.

Permanent establishments in Singapore, however, are required to declare such payments in their annual income tax returns and will be assessed to tax on such payments unless specifically exempted from tax.

Extension of WHT exemption for OTC financial derivatives payments

Financial institutions licensed and approved by the MAS or exempted from such licensing or approval under any Act of Parliament administered by the MAS, including an institution approved as a Finance and Treasury Centre (FTC) under s 43G of the Act, enjoy WHT exemption on all payments made on qualifying OTC financial derivatives to persons who are neither residents of nor PEs in Singapore. The WHT exemption, which would have expired on 19 May 2012, is extended to 31 March 2021 to support the growth of Singapore's derivatives market.

The extension covers tax exemption on:

(a) payments liable to be made during the period between 20 May 2012 and 31 March 2021 on contracts taking effect, extended or renewed before 20 May 2012, and

(b) all payments liable to be made on contracts taking effect, extended or renewed from 20 May 2012 to 31 March 2021.

Changes to the "designated investments" and "specified income" lists under the FSI schemes

The following tax incentive schemes enjoy exemption based on a list of specified income from a list of designated investments:

(a) Foreign trust scheme

(b) Foreign account of charitable purpose trust scheme

(c) Fund management incentive schemes

The MPA will release further details of the changes to the MSI-SRS, MSI-AIS and MSI-ML (Ship) awards by June 2016.

¶18-905 Approved International Shipping Enterprise scheme

The Approved International Shipping Enterprise (AIS) incentive scheme applies to resident shipping companies which own or operate Singapore ships or foreign ships and approved ship-leasing companies. The AIS scheme is administered by the Maritime and Port Authority of Singapore (MPA).

To qualify for the AIS scheme, a shipping company must:

- be a Singapore resident company
- be a significant shipowner and fleet operator of foreign ships
- have direct attributable business spending of at least $4m a year in Singapore, and
- have at least 10% of its fleet (or a minimum of one ship) registered in Singapore.

Tax benefit

The following income of an AIS is exempt from tax (s 13F(1)):

- income from the carriage of passengers, mail, livestock or goods from outside Singapore port limits by any foreign ship
- income from the charter of any foreign ship to a non-resident of Singapore, or to another AIS, for the carriage of passengers, mail, livestock or goods outside Singapore port limits
- income from the cartiage of passengers, mail, livestock or goods by a foreign ship to Singapore solely for the purpose of transhipment
- income from the operation or charter of an approved floating production storage offloading ship or an approved floating storage offloading ship (effective from YA 2000)
- income from the towing or salvage operations cartied out by any foreign ship outside Singapore port limits (effective from YA 2003)
- income from the charter of any foreign ship to any person for towage and salvage operations conducted outside Singapore port limits (effective from YA 2003)
- income from the operation of any dredger, seismic ship or any vessel used for offshore oil or gas activity outside Singapore port limits (effective from YA 2005)
- income from the charter of any foreign dredger, foreign seismic ship, or any foreign vessel used for offshore oil or gas activity to any person where such dredger, seismic ship, or vessel is used by the person for operations outside Singapore port limits (effective from YA 2005)
- income from foreign exchange and risk management activities which are carried out in connection with and incidental to qualifying activities (effective from YA 2009), and

- income derived on or after 22 February 2010 from the provisions of ship management services to a qualifying SPV in respect of ships owned or operated by the qualifying SPV.

Where a balancing charge arises on the disposal of an approved floating production storage offloading ship or an approved floating storage offloading ship, a portion of the charge computed using a prescribed formula will be exempt from tax (s 10(5)).

The tax exemption is granted for an initial period not exceeding 10 years and may be extended for another 10-year period for a maximum 20-year period of incentive. With effect from 2007, shipping companies may apply for a third AIS incentive period of 10 years, thus enjoying a maximum period of 30 years of the incentive. As announced in the 2013 Budget, shipping companies may apply for a fourth AIS incentive period of 10 years. This means that a shipping company can be granted the MSI-AIS award for a maximum tenure of 40 years subject to conditions. Application is to be made to the MPA.

In determining the amount of income of an AIS, wear and tear allowances are to be taken into account even if no claim has been made by the enterprise. The allowances can be set off against income qualifying for the 10% concessionary tax rate. Any unabsorbed allowances cannot be deducted against other income. However, if at the end of the tax exempt period there are unabsorbed allowances, these allowances can be deducted against other income for the YA relating to the basis period in which the exemption expires and for any subsequent YAs, subject to the usual continuity of shareholders and same trade tests (s 13F(3)).

If an AIS incurs a loss during the tax exempt period, the loss cannot be deducted against other income. However, any loss which remains unabsorbed at the end of the tax exempt period is available for deduction against other income for the YA relating to the basis period in which the exemption ceases, and for any subsequent YAs, subject to the usual continuity of shareholders test (s 13F(4)).

The sunset clause for this category has been extended from 31 May 2016 to 31 May 2021 (2015 Budget announcement).

¶18-910 Maritime Finance Incentive

The Maritime Finance Incentive (MFI) scheme came into effect from YA 2007. It is meant to encourage the development of ship financing activities in Singapore. The MFI status is granted from 1 March 2006 to 28 February 2011 for a period not exceeding 10 years. To further support Singapore's development as a maritime financing hub, the expiry date of the MFI has been extended from 28 February 2011 to 31 March 2016 and as announced in the 2015 Budget, to 31 March 2021. Taxpayers applying for the MFI during the period from 1 March 2011 to 31 March 2021 (both dates inclusive) will be given approval for a period of not more than five years (s 43W(4A)).

Tests used by the Comptroller to determine if arrangements are caught under s 33

In deciding whether an arrangement is caught by s 33, the Comptroller would consider, among other things:

- whether artificiality is present
- whether various intermediaries or transactions have been interposed to reduce or avoid tax, and
- whether transfer pricing has occurred.

The primary test is whether there is commercial justification for the transaction.

The Comptroller has stated that the legislation will not introduce a tax liability where none already exists. Examples of transactions which will not be caught by s 33 are:

- unremitted foreign income from deposits with an offshore bank (interest which would be taxable if it arose from an onshore bank deposit with a commercial bank in Singapore)
- an employee who is provided with housing accommodation instead of being given a housing allowance (before year of assessment (YA) 2015)
- individuals and companies granted tax exemptions and concessions under the incentive schemes, and
- pioneer companies which have incurred losses or low profits in their non-pioneer activities may set up separate companies for these activities to avoid being caught under s 8(3) of the *Economic Expansion Incentives (Relief from Income Tax) Act (Cap 86, 2005 Revised Ed)* which specifies that if the profit of the separate trade (non-pioneer activity) is less than 5% of the full sum receivable from the non-pioneer activity, that profit will be deemed to be 5% of the full sum so receivable and the pioneer income will be abated accordingly.

Meaning of "artificial"

Arrificiality is one of the factors that will determine if a taxpayer is caught by s 33. The question of whether a transaction is arrificial is not to be judged by the fiscal result or even the ultra fiscal object so long as it can be said to be a commercial transaction. However, where a transaction is inspired by fiscal considerations and is so shaped that its character no longer retains the nature of a trading transaction, it can be said to be artificial. Such a transaction takes the shape of an arrangement or a scheme which cannot be fairly regarded as being a transaction in the relevant trade.

Some factors that need to be considered when imputing an arrificial transaction are:

- What was the motive behind the transaction?
- Was the transaction in the ordinary course of the trade or business, ie was the purchase or sale made in "what is truly the carrying on" of the business of the taxpayer?
- Was the transaction merely one to secure a tax advantage?

- Was the buyer in effectual and constant control of the seller?
- Was the loss incurred in the course of the trade of the taxpayer?
- Did the purchaser have any options in the transaction conremplated?

There are several Singapore and Malaysian cases on artificial transactions. Four of the more important cases are summarised below:

CIT v AB Estates Ltd

In the Malaysian case *CIT v AB Estates Ltd* (1950–1985) MSTC 95; (1967) 1 MLJ 89, the taxpayer company acquired a rubber estate and leased it to a subsidiary for a sum far below the fair rental at rhat time. The Federal Court held that the lease was not a transaction in the ordinary course of business and consequently the transaction was artificial. The transaction had not been motivated by economic consideration and was thus unnatural and artificial.

Director-General of Inland Revenue v LD Timber Sendirian Berhad

In *Director-General of Inland Revenue v LD Timber Sendirian Berhad* (1978) 1 MLJ 203, the taxpayer signed two agreements on the same day: one for timber extraction and the other for the sale of timber and the execution of certain works on the same day. The intention was to separate the income derived from the extraction of timber from the income from the sale of timber with the result that the company would escape liability for timber profit tax on the income derived from the sale of the timber but not on the timber extraction fees.

The Malaysian court applied the test in *Newton v FC of T* (1963) 109 CLR 9; (1956–1958) 7 AITR 1, ie if the transactions are capable of explanation by reference to ordinary business or family dealing, without necessarily being labelled as a means to avoid tax, then the arrangement is not caught by the tax-avoidance section. It was found that the arrangement adopted by the company had been an ordinary business dealing.

Appeal No 4 of 1970

In the Singapore High Court case *Appeal No 4 of 1970*, the taxpayer company was engaged in developing land. A plot of land was purchased by the taxpayer company and later sold to a company, which had been formed by the managing director of the taxpayer. The managing director paid for the plot with money loaned to him by the taxpayer company. The instructions for the sale and purchase of the plot had been given by the managing director in his capacity as managing director of both companies. The transaction between the taxpayer company and the managing director's company was disregarded as artificial and the taxpayer was assessed on the full profits arising from the transactions.

AQQ v CIT

In the Singapore case *AQQ v CIT* (2011) MSTC ¶50-002; [2011] SGITBR 1, the Board of Review had to decide if the Comptroller was correct in applying s 33 to a financing arrangement.

COMPUTATION OF GST

¶21-300 Computation of GST

GST is chargeable on the value of supply. The applicable GST rate is 0% for zero-rated supplies, and 7% for standard-rated supplies from 1 July 2007.

Two relevant concepts, ie the value of supply (¶21-310) and the time of supply (¶21-320), are addressed below. For the concept of "value of imports", see ¶21-315.

¶21-310 Value of supply

The value of a supply of goods or services is determined as follows:

- *If the supply is for a consideration in money (s 17(2))*

  The value is such amount as, with the addition of the tax chargeable, is equal to the consideration, ie

  Value of supply + GST = Money consideration

- *If the supply is not for a consideration or is for a consideration not consisting or not wholly consisting of money (s 17(3))*

  Value of the supply is its open market value (OMV), ie

  Value of supply = OMV

- *Where a supply of any goods or services is not the only matter to which a consideration in money relates (s 17(4))*

  The supply is deemed to be for such part of the consideration as is properly attributable to it.

The value of a supply includes taxes and duties such as entertainment duty, excise duty and cess, but excludes stamp duty.

Reimbursement versus disbursement

In some situations, it may not be clear whether a recovery of expenses is a reimbursement (ie it forms part of the value of supply and therefore attracts GST) or a disbursement (ie it does not form part of the value of supply and therefore does not attract GST).

IRAS' position from 1 July 2013

From 1 July 2013, the IRAS treats a recovery of expenses as a reimbursement if the GST-registered trader has incurred the expenses as a principal, and as a disbursement if the trader has incurred the expenses as an agent (ie on behalf of another person).

The manner of invoicing (eg showing such expenses as a separate item on the invoice) is, by itself, insufficient to determine the GST treatment of those items.

The IRAS also states that generally, the trader is acting as a principal in procuring the goods or services if he contracts with the supplier in his own name or capacity. If the contractual relationship is not clear, the following **indicators** can be used as a guide to determine whether the trader is acting as a principal (as opposed to an agent):

- whether he bears the contractual liability and assumption of responsibilities and risks
- whether he has legal obligations to make payment or payment arrangement for the goods and services (eg the third-party supplier's tax invoice is issued in the trader's name)
- whether he has the authority to alter the nature or value of the supplies and make decisions on the value of expenses to recover
- whether he is the only party known to the third-party supplier, and
- whether he owns the goods.

Scenario 1

Reimbursement

A GST-registered audit firm incurs transport fares in the course of making a supply of audit services to its client.

The firm acquired the transport services as a principal in its own capacity and is legally obliged to pay the transport service providers. The firm received and used the transport services directly in the course of performing its work. Hence, the recovery of these expenses from the client is a reimbursement (part of the value of supply of services).

The firm should therefore include the transport fares in its billing to the client for the audit fee.

Scenario 2

Disbursement

A GST-registered corporate secretarial company pays a fine on its client's behalf for late filing of annual returns required by the Accounting and Corporate Regulatory Authority (ACRA). The company subsequently bills the client for the supply of corporate secretarial services.

Here, by contrast to Scenario 1, the company should exclude the fine paid on the client's behalf (as it is a disbursement) in its billing to the client for the corporate secretarial fee.

For more details and useful examples illustrating the IRAS' position, see IRAS e-tax Guide "GST: Guide on Reimbursement and Disbursement of Expenses", published on 31 May 2013.

(For the IRAS' position before 1 July 2013, see the previous edition of this book.)

Open market value (OMV)

The OMV is the GST-exclusive price that the goods or services would fetch at that time when they are supplied between two unrelated persons (s 17(5)). This price is net of discounts.

Anti-avoidance provisions apply to supplies between "connected persons" (Third Schedule). In such instance, the CGST may direct that the value of a supply be taken to be its OMV where:

(a) the supply is made for a consideration in money

(b) the consideration is less than the market value of the supply

(c) the supplier and the customer are connected, and

(d) if the supply is a taxable supply, the customer is unable to recover some or all of the tax chargeable as input tax (eg if the customer is not registered for GST, or is partially exempt) (Third Schedule, para 1).

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing reliefs
Philippines	1.1.78	Income taxes	Tax charged in respect of international air transport and shipping operations limited to the lesser of:	For dividends paid by company which is resident in one Contracting State to beneficial owner who is a resident of the other Contracting State, source country tax limited to:	Source country tax on interest arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 15% of gross interest	Source country tax on royalties arising in one Contracting State and paid to resident of the other Contracting State:	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for:	Available for Singapore and Philippine taxes forgone under the special incentive laws designed to promote economic development in Singapore and the Philippines respectively
			(i) 1.5% of gross revenues derived from sources in Contracting State, or	(i) 15% of gross dividends if recipient is company or partnership holding at least 15% of Philippine company's voting stock during part of taxable year which precedes date of payment of dividends and during the whole of its prior taxable year		(i) in the case of the Philippines, limited to 15% of gross royalties where royalties are paid by an enterprise registered with the Philippine Board of Investments and engaged in preferred activities and where royalties are paid in respect of cinematographic films or tapes for television or broadcasting	(i) in the case of professional services, assignments lasting 90 days or less	
			(ii) the lowest rate of Philippine tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State	(ii) 25% of gross dividends in all other cases		(ii) in the case of Singapore, where royalties are approved under the *Economic Expansion Incentives (Relief from Income Tax) Act*, they shall be exempt	(ii) in other cases, assignments lasting 183 days or less	

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing reliefs
Switzerland (1976) (terminated)	1.1.75	Federal, cantonal and communal taxes on income and capital	Exempt from tax in one Contracting State for international air transport operations and tax reduction of 50% for international shipping operations of enterprise carried on by a resident of the other Contracting State	For dividends paid by company resident in one Contracting State to beneficial owner who is a resident of the other Contracting State, source country tax limited to: (i) 10% of gross dividends if recipient is company holding at least 25% of dividend-paying company's capital, or (ii) 15% of gross dividends in all other cases	Source country tax on interest derived from one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 10% of gross interest except that interest arising in Singapore and paid to resident of Switzerland is exempt from Singapore tax if loan or indebtedness is approved by Finance Minister of Singapore	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 5% of gross royalties except that royalties arising in Singapore and paid to a resident in Switzerland are exempt from Singapore tax if approved by the Finance Minister of Singapore tax	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except where assignments last 183 days or less	Available for Singapore tax forgone on dividends and interest under the tax treaty
Article	26	2	8	10	11	12	14–15	22

Agreement	Effective date/year of assessment (in Singapore)	Foreign taxes allowed as a credit	Tax on shipping and airline operations	Tax on dividends	Tax on interest	Tax on royalties	Tax on personal services	Tax sparing reliefs
Taiwan (Republic of China)	30.12.81	Income tax	Exempt from tax in one Contracting State for international air transport operations and tax charged in respect of international shipping operations limited to 2% of gross revenue for enterprise carried on by a resident of the other Contracting State	For dividends paid by company which is a resident in one Contracting State to beneficial owner who is a resident in the other Contracting State, source country tax restricted to amount which together with corporate income tax payable on profits of dividend-paying company constitute 40% of taxable income	Not covered by agreement	Source country tax on royalties arising in one Contracting State and paid to beneficial owner who is resident in the other Contracting State limited to 15% of gross royalties	Income derived by individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax in the latter except for assignments lasting 183 days or less	Available for Singapore and Taiwanese tax forgone under laws designed to promote economic development in Singapore and Taiwan respectively (Note: To eliminate treaty shopping, Taiwan has announced that it will not give tax sparing credits to Taiwanese companies investing in China via Singapore)
Article	22	2	8	10		11	12	18
Thailand (2016)	1.1.2017	Income tax in Singapore; income tax and petroleum income tax in Thailand	Income or profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that Contracting State	Source country tax on dividends arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to 10% of gross dividends	Source country tax on interest arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to:	Source country tax on royalties arising in one Contracting State and paid to a beneficial owner who is resident in the other Contracting State limited to:	Income derived by an individual resident in one Contracting State from personal services performed in the other Contracting State subject to tax only in the former except for:	Not available