residency status of a person for each YA may have an impact on its income tax liability and obligations. The tax treatment may differ depending on the residency status, eg:

- applicable tax rates
- the exemption of income, and
- the availability of personal reliefs and foreign tax credits.

These are further discussed at ¶12-100ff and ¶13-100ff.

¶2-610 Residence of an individual

"Residence" can have a different meaning depending on the context in which it is used. In relation to an individual, residence is usually taken to mean the place where he normally lives and sleeps, where he carries on business or employment and where he is to be found daily. Residence for tax purposes, however, does not solely depend on where one is born, where one is domiciled, what one's nationality is or the place one calls home.

For income tax purposes, the notion of residence differs from that for other purposes. For instance, an individual may be a permanent resident of Singapore under the immigration rules, but he may or may not be a tax resident in Singapore.

Definition of "resident in Singapore"

Under s 2(1) of the Act, "resident in Singapore" —

> "(a) in relation to an individual, means a person who, in the year preceding the year of assessment, resides in Singapore except for such temporary absences therefrom as may be reasonable and not inconsistent with a claim by such person to be resident in Singapore, and includes a person who is physically present or who exercises an employment (other than as a director of a company) in Singapore for 183 days or more during the year preceding the year of assessment".

When determining the residency status of an individual for any YA, one must look at his personal circumstances in the year preceding the YA. There is no statutory provision in Singapore for treating an individual as a tax resident for part of a year and a non-resident for the remaining part of a year. This means that an individual will either be resident or non-resident for the whole YA.

From the definition of "resident in Singapore", the first test is **qualitative**.

An individual is resident in Singapore for a YA if, in the year preceding the YA, he resides in Singapore except for such temporary absences from Singapore as may be reasonable and not inconsistent with his claim to be resident in Singapore.

The second test, which is an alternative test for residence, is a **quantitative** one that consists of two "sub-tests":

(i) the **duration of physical presence** (ie stay) in Singapore is ≥ 183 days in the calendar year preceding the YA concerned, and

(ii) the **duration of employment** (but not as a company director) exercised in Singapore is ≥ 183 days in the calendar year preceding the YA concerned.

The duration of employment includes weekends, public holidays and any absences from Singapore that are temporary (eg overseas vacation leave) or incidental to the employment (eg business trips) (**source:** Inland Revenue Authority of Singapore's (IRAS') website at www.iras.gov.sg).

If either of these sub-tests is satisfied, the individual will be resident for that YA.

Qualitative test

The meaning of the terms "resides" and "temporary absences" found in the qualitative test are now examined.

"resides"

The term "resides" is not statutorily defined. The ordinary meaning of "reside", as defined in the *Oxford English Dictionary*, is:

> "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place".

This definition was quoted with approval by Viscount *Cave* in *Levene v IRC* (1928) 13 TC 486.

Determining the residency status of an individual is essentially a question of fact. The following factors are relevant:

- whether the individual has family ties in Singapore
- whether the individual has accommodation available to him in Singapore
- whether the individual is in Singapore or abroad for a temporary purpose
- whether the individual has set up a permanent home in Singapore or abroad, and
- the frequency, regularity and duration of visits to Singapore and the purpose of such visits.

"temporary absences"

An individual can qualify as resident in Singapore even though he may be away from Singapore during the whole year, part of the year, or even a few years. This is provided that the individual's absences from Singapore:

- are considered as "temporary", and
- are reasonable and not inconsistent with the claim that he is resident in Singapore.

Absence from Singapore generally should not be with a view or intent to establish a residence abroad.

Example 9

If an employee went to New York on a permanent transfer and took up a permanent position there, the employee's absences from Singapore would not satisfy the proviso above.

The term "temporary absences" does not necessarily mean a shorter duration abroad as compared to the presence of the individual in Singapore. Whether an absence for an extended period may be regarded as "temporary" would depend on the:

- purpose behind the absence (*Re Young* 1 TC 57)
- duration of the absence. In *Federal Commissioner of Taxation v Applegate* 79 ATC 4307, the Court considered that it is a matter of degree and suggested that an absence over a period of 10 years could not reasonably be regarded as a temporary absence.

In *Rogers v IRC* (1879) 1 TC 225, a seaman working abroad over the entire duration of a tax year, but whose family remained in the United Kingdom (UK), was taxed on a resident basis. The Court said:

> " . . . The circumstance that Captain Rogers has been absent from the country during the whole year to which the assessment applies does not seem to me to be a specialty of the least consequence. That is a mere accident. He is not a bit the less a resident in Great Britain because the exigencies of his business have happened to carry him away for a somewhat longer time than usual during this particular voyage".

Example 10

Ronald Lee, a Singaporean who has lived and worked in Singapore all his life, was seconded to his company's head office in New York for the period 1 June 2018 to 30 November 2020. During that 30-month period, Lee returned to Singapore twice for holidays, each time for five days.

Under the qualitative test, Lee will be resident in Singapore for YA 2019 to YA 2021 (inclusive).

Quantitative test

The quantitative test is an alternative test of residence for individuals who do not qualify as resident under the qualitative test. Under the quantitative test, an individual:

- who is physically present in Singapore, or
- who exercises employment in Singapore (other than as a director of a company) for 183 days or more in the calendar year preceding the YA in Singapore

is treated as resident for tax purposes.

In calculating the 183-day limit:

- the 183 days need not be continuous, and
- presence in Singapore for any part of a day is counted as presence for one whole day (s 2(2)).

Example 11

(a) Professor Black is English and lives with her family in London and works at the University of London. She came to Singapore on 15 January 2019 as a visiting professor of a local university for a term of three months.

Professor Black will be regarded as not resident in Singapore for YA 2020.

(b) In January 2019, John, an American, came to Singapore on a temporary assignment to work as a marketing executive of the Singapore branch of his US employer. The project is for a term of nine months.

As John will be employed/present in Singapore for more than 183 days in 2019, he will be regarded as resident in Singapore for YA 2020.

(c) A foreigner who is in Singapore from 1 August 2019 to 20 June 2020 would not be treated as resident in Singapore for YA 2020 or YA 2021 as his stay in Singapore is less than 183 days in 2019 and in 2020 respectively.

(d) By contrast, a foreigner who is in Singapore from 1 January 2019 to 20 November 2019 would be treated as resident in Singapore for YA 2020 as his stay in Singapore exceeds 183 days in 2019.

It is therefore possible that two foreigners working in Singapore for the same period of time may have different residency status and consequently different tax liabilities in Singapore merely because they commenced their employment on different dates.

To remove/reduce any potential inequity, the IRAS implemented the following two-year and three-year administrative concessions for foreigners working in Singapore.

Administrative concession for foreigners working in Singapore

The **two-year concession** applies to an individual who enters Singapore on or after 1 January 2007 and whose continuous stay (including work) in Singapore is at least 183 days straddling two calendar years. In such a situation, the individual will be regarded as resident for both YAs. This concession is an enhancement of the three-year concession.

Under the **three-year concession** which applies to individuals entering Singapore before or from 1 January 2007, a foreigner who stays or works in Singapore continuously for three consecutive years would be treated as a resident for all the three YAs even if the number of days in Singapore is less than 183 days in the first and/or third year.

Example 12

If the individual's employment in Singapore spans from 15 August 2018 to 31 March 2020, he would have been regarded as resident in Singapore from YA 2019 to YA 2021 as a concession.

Example 13

(a) Charles, a foreigner, arrived in Singapore on 14 August 2018 and commenced employment on 15 August 2018. He ceased employment in Singapore on 15 September 2019.

Under the two-year concession, he will be regarded as resident for both YA 2019 and YA 2020.

(If the quantitative test in s 2(1) is strictly followed, he would have been assessed as non-resident for YA 2019 and resident for YA 2020.)

(b) David, a foreigner, came to Singapore on 1 August 2018 and commenced employment with a local information technology company on the same day. He completed his 20-month employment on 31 March 2020.

Under the three-year concession, David will be regarded as resident for all three YA 2019, YA 2020 and YA 2021.

The above IRAS concessions apply to a foreign employee, but not to:

- a company director
- a public entertainer, or
- an individual who is exercising a profession under s 10(1)(a) (source: IRAS' website at www.iras.gov.sg).

The purpose of the concession is to reduce the individual's tax liability. If an individual finds that he is better off paying less tax based on his residency status as determined under s 2(1), he need not avail himself of the concession.

Letter of undertaking from employer

Granting such a concession (ie treating the individual as a resident for all the YAs concerned) may result in an unintended reduction in the individual's tax liability for the first YA (to which the date of his arrival relates). This may occur, eg when the individual left his job without serving the minimum period of 183 days straddling two calendar years. To ensure that the tax properly payable by him in these circumstances is collectible, the Comptroller may require the individual to furnish, at the outset, a letter of undertaking from his employer to guarantee the payment of the difference in tax payable between the resident and non-resident bases of assessment if he leaves Singapore without satisfying the 183-day condition.

Company directors

The definition of "employee" in s 2(1) includes a director of a company. However, the definition of "resident in Singapore" for an individual does not extend the duration of employment exercised in Singapore under the quantitative test to a director.

Executive director

A director is an executive director (also called working director) if he works for the company more or less full-time and is involved in the day-to-day management of the company.

Non-executive director

He is a non-executive director if his involvement with the company is limited to attendance at meetings of the board of directors.

The IRAS recognises this distinction and, as another concession, allows the "duration of employment" test of residence to be applied to an executive director. For a non-executive director, his residency status is established on the basis of:

- the qualitative test, or
- the physical presence test only.

¶2-620 Residence of a company

A company is "resident in Singapore" if the **control and management** of its business are exercised in Singapore (s 2(1)). The phrase "control and management" is not defined. Control and management do not mean the carrying on of the company's day-to-day business. Consequently, the locale of trading activities or physical operations is not necessarily the place where control and management are exercised.

In the UK, the corresponding test for corporate residence is "central management and control". Tax cases there have identified this with the governing body vested with the superior directing authority, ie policy-level decision-making powers. Such authority is typically vested in the company's board of directors under the company's constitution. The fact that shareholders have the power to remove directors is not relevant in this respect (but see exception of "controlling shareholder" below). In practical terms, superior directing authority includes the authority to decide such matters as:

- whether the company is to cease operations entirely
- what the company's business will be
- whether and when a dividend is to be declared, and
- whether a merger or acquisition is to go ahead.

The location where the central management and control of a company are exercised is a question of fact to be determined by a scrutiny of the course of the business or trading (*De Beers Consolidated Mines Ltd v Howe* (1906) 5 TC 198).

In *NB v CIT* (2006) MSTC 5,571; [2006] SGITBR 2 (para 26), the Singapore Board of Review affirmed that there was no difference between the UK test of "central management and control" and the test of "control and management" in s 2(1).

Board of directors meetings

As a general rule, therefore, a company is resident in Singapore if its board of directors holds its board meetings in Singapore, exercising the control and management of the company's business. In the rare situation, however, where the directors "stand aside" from their directorial duties such that the control and management of the company's business are in fact exercised by another body (eg a controlling shareholder), the superior directing authority will vest with that body instead. This situation may occur, eg where the board of directors effectively relinquishes its directorial functions by:

- not even holding any meetings in exercise of those functions, or

- holding meetings but merely rubber-stamping the instructions that emanate from the parent company (in other words, without giving any independent input as a board into the decision-making process).

Country of incorporation

In determining the residence of a company for Singapore tax purposes, the country of incorporation does not matter. A foreign-incorporated company will be resident in Singapore if the control and management of its business are exercised in Singapore. Conversely, a Singapore-incorporated company will be non-resident if the control and management of its business are exercised outside Singapore.

Change in place of residence

A company may change its place of residence. It can be resident in Singapore for one YA and non-resident for another. The definition of "resident in Singapore", in relation to a company, omits the reference "the year preceding the year of assessment" found in the same s 2(1) definition in relation to an individual. It is therefore arguable that, unlike for an individual, the residency status of a company for any YA is determined by reference to the circumstances in the YA itself and not to those in the year preceding the YA. In practice, however, the IRAS looks at the year preceding the YA when determining corporate residence.

Differences in tax treatment of resident and non-resident companies

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:

- only a Singapore resident company may pay an exempt one-tier dividend while a non-resident company pays a foreign dividend (see ¶10-100ff)
- 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
- only a Singapore resident company qualifies for the foreign-sourced income exemption under s 13(8) (see ¶14-100ff)
- certain types of income paid to a non-resident company (but not to a resident company) are subject to withholding tax (see ¶13-100ff), and
- only a Singapore resident company qualifies for the enhanced tax exemption for new companies (see ¶2-900).

¶2-650 Inward redomiciliation regime for companies in Singapore

The new Pt XA of the *Companies Act* (Transfer of Registration) contains the inward redomiciliation regime for companies in Singapore. The regime takes effect from 11 October 2017. It allows foreign corporate entities to transfer their registration from their original jurisdiction to Singapore where the original jurisdiction allows outward redomiciliation. For example, a foreign corporate entity may want to relocate its regional and worldwide headquarters to Singapore and still retain its corporate history

and branding. Compared with registering a subsidiary in Singapore, redomiciliation may minimise operational disruption to the company. Foreign entities may choose to redomicile for reasons such as:

- pro-business legislation
- easier access to capital markets, and
- proximity to suppliers and customers.

To be able to redomicile, they must be bodies corporate that can adapt their legal structure to the companies limited by shares structure under Singapore's *Companies Act*. In addition, they must meet certain prescribed requirements and their applications for redomiciliation are subject to the Registrar of Companies' (or the Accounting and Corporate Regulatory Authority's (ACRA's)) approval.

The inward redomiciliation regime has extensive implications on many income tax topics such as:

- deductions
- capital allowances, and
- foreign tax credits

(see ¶7-100ff, ¶8-000ff and ¶14-100ff respectively).

For this reason, the general legal aspects of the regime are set out below as background (**source:** ACRA's website at www.acra.gov.sg).

A foreign corporate entity that redomiciles to Singapore will become a Singapore company and will be required to comply with the *Companies Act* like any other Singapore incorporated company. Redomiciliation will not affect the obligations, liabilities, properties or rights of the foreign corporate entities.

The **minimum requirements** for transfer of registration are:

- size criteria. The foreign corporate entity must meet any two of the following criteria in the two financial years immediately preceding its application:
  - its total assets exceed $10m in value
  - its annual revenue exceeds $10m, and
  - it has more than 50 employees
- solvency criteria:
  - there is no ground on which the foreign corporate entity could be found to be unable to pay its debts
  - it is able to pay its debts as they fall due during the period of 12 months after the date of the application for transfer of registration
  - it is able to pay its debts in full within the period of 12 months after the date of winding up (if it intends to wind up within 12 months after applying for transfer of registration), and
  - the value of its assets is not less than the value of its liabilities (including contingent liabilities)

Example 1

Careless Lee Pte Ltd's raw materials were destroyed by a fire in 2018. The loss was quantified at $500,000 and accounted for in the profit and loss account for the year ended 31 December 2018. Insurance compensation of $400,000 was received in June 2019 and accounted for in the 2019 profit and loss account. The Comptroller may treat the matter in two ways:

(a) In YA 2019, he may allow a deduction of $100,000 for the net loss suffered in 2018. The compensation received in 2019 will not be taxed in YA 2020.

(b) In YA 2019, he may allow a deduction for the loss of $500,000. In YA 2020, he will treat the compensation received in 2019 as taxable income.

Whichever method the Comptroller uses, the net loss of $100,000 qualifies for a deduction. In the case of fixed assets qualifying for capital allowances (CA), the amount recovered is to be taken into account in calculating the balancing allowance or balancing charge (see ¶8-255).

- Rent or the cost of repairs to any premises or part of premises not paid or incurred for the purpose of producing income (s 15(1)(f)).
- All taxes levied on income. This includes income tax paid in Singapore or outside Singapore (s 15(1)(g)).
- Any amount of goods and services tax (GST) payable by a taxpayer:
  - who is required to register under the *Goods and Services Tax Act (Cap 117A, 2005 Rev Ed)* (the "GST Act") but has failed to do so, or
  - who is entitled to credit the amount of tax payable as an input tax (s 15(1)(h)).
- Any amount of output tax paid or payable under the GST Act which is borne by a person registered as a taxable person under that Act (s 15(1)(m)).
- Payments made to any provident fund, savings, widows' and orphans' or other society or fund, including the Supplementary Retirement Scheme (SRS), except obligatory payments to the Central Provident Fund (CPF) accounts of employees, payments to employees' retirement accounts or special accounts in accordance with the *Central Provident Fund Act (Cap 36, 2013 Rev Ed)*; qualifying payments to employees' SRS accounts and such payments as allowed under s 14(1)(e), 14(1)(f), 14(1)(fa), 14(1)(fb) and 14(1)(fc) (s 15(1)(i)).
- Interest and other related payments in connection with indebtedness referred to in s 12(6) paid by any person out of Singapore to another person out of Singapore except where tax has been deducted and accounted for under s 45 (s 15(1)(j)).
- Any outgoings and expenses, whether directly or in the form of reimbursements, and any claim for the cost of renewal incurred on or after 1 April 1998 in respect of a motor car (ie a car constructed or adapted for the carriage of not more than seven passengers exclusive of the driver and the weight of which unladen does not exceed 3,000 kg) except:
  - a taxi, subject to conditions (see ¶7-520)
  - a motor car registered outside Singapore and used exclusively outside Singapore
  - rental cars of hiring companies

  - a motor car which was registered before 1 April 1998 as a business service passenger vehicle (see ¶7-520)
  - a motor car registered on or after 1 April 1998 which is used principally for instructional purposes if the person is carrying on the business of providing driving instruction and holds a driving school licence or driving instructor's licence issued under the *Road Traffic Act (Cap 276, 2004 Rev Ed)*, and
  - a chauffeured private hire car used by an individual who holds a vocational licence granted under s 110 of the *Road Traffic Act* or otherwise permitted under the *Road Traffic Act* to drive a chauffeured private hire car subject to conditions (s 15(1)(k)) (see ¶7-520).
- Any outgoings and expenses incurred in respect of a designated unit trust (per s 35(14)) by a person who is a unitholder of the trust (s 15(1)(l)).
- Any outgoings and expenses, whether directly or in the form of reimbursements, incurred in respect of any right or benefit granted to any person to acquire shares on or after 1 January 2002 in any company if the right or benefit is not granted by reason of any office or employment held in Singapore by the person (s 15(1)(p)).
- Any outgoings and expenses, whether directly or in the form of reimbursements, incurred by any company in respect of any right or benefit granted to any person, by reason of any office or employment held in Singapore by that person, to acquire shares (other than treasury shares) of a holding company of that company (s 15(1)(q)). This means that a subsidiary company would not be able to claim a deduction for any recharges in respect of stock option expenses from its holding company.

Chapter 7

GENERAL DEDUCTION FORMULA

¶7-300 General deduction formula

Section 14(1) sets out the general deduction formula, which reads:

> "For the purpose of ascertaining the income of any person for any period from any source chargeable with tax under this Act (referred to in this Part as the income), there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period by that person in the production of the income, including . . ."

The applications of this general deduction formula are discussed below.

¶7-310 "Any person . . . from any source"

The formula is to be applied when determining the income of "any person . . . from any source". Its application is therefore not restricted to any particular class of taxpayers or to any particular source of income. The formula requires a source-by-source concept to be applied — expenses incurred in the production of each source of income must be matched strictly against that source. In other words, expenses are not

deductible on an aggregated basis to be deducted against the total of all sources of income. Example 2 illustrates:

Example 2

	$	$	$
Adjusted trade income (s 10(1)(a))			28,900
Interest income from subsidiary (s 10(1)(d))		6,700	
Less: Loan interest expense		(4,300)	
			2,400
Rental (s 10(1)(f))		22,000	
Less: Property tax	(18,000)		
Repairs and maintenance	(3,500)		
Loan interest expense	(4,600)		
Insurance expenses	(1,900)	(28,000)	NIL*
Statutory income			31,300

(* The excess amount of rental expense of $6,000 cannot be used as a deduction against other sources of income (eg s 10(1)(a) trade source) and is disregarded as the rental income in Example 2 is a s 10(1)(f) source of income.)

¶7-320 Income chargeable with tax

All outgoings and expenses claimed must be related to a source of income that is chargeable to tax under the Act. If an income is not chargeable to tax, eg exempt income, no related expenses can be deducted.

Liberalised tax treatment for repatriated foreign income — with effect from YA 1996

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 be 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.

Conditions

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.)

Methods for computing deductible expenses against repatriated foreign income

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", and

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).

- where a taxpayer incurs dual-purpose expenditure and the amount is divisible, an amount of the expenditure that is apportioned on a reasonable basis is allowed. Examples of these expenses include entertainment and travelling expenses incurred by a sole proprietor, and the costs of airfares incurred by an artiste who performed in Singapore as part of a regional tour, and
- where a taxpayer derives income from different sources taxable under s 10(1) or from both taxable and non-taxable sources (eg exempt pioneer income),

common expenses are apportioned among the relevant sources on a fair and agreed basis.

Reasonableness or magnitude of expenditure

The Comptroller can probe into the reasonableness or magnitude of an expenditure only for purposes of determining whether, in fact, the amount is spent. A taxpayer is entitled to conduct his business as he thinks fit. If a transaction is at arm's length, the Comptroller cannot disallow any part of the expenditure on the basis that the taxpayer could have incurred a smaller amount.

¶7-340 Incurred during that period

Regarding the meaning of the word "incurred", the following dictum in *New Zealand Flax Investments Ltd v FCT* (1938) 61 CLR 179 is helpful:

> ". . . 'incurred' does not mean only defrayed, discharged or borne, but rather it includes encountered, run into or fallen upon. It is insufficient to attempt excessive definitions of a conception intended to have such a various or multifarious application but it does not include a loss or expenditure which is no more than impending, threatened or expected".

The word "incurred" was also examined by the Hong Kong Privy Council in *CIR v Lo & Lo* (1984) WLR 986:

> "an expense incurred is not confined to a disbursement, and must at least include a sum in which there is an obligation to pay, that is to say an accrued liability which is undischarged".

Provisions for future expenditure

The accrual basis of accounting also requires companies to accrue for expenditure in which the legal liability to pay arises or crystallises in the subsequent accounting period. Examples include provisions for:

- leave passages
- leave pay
- retiring benefits, etc.

However, for tax purposes, provisions for such expenditure are not deductible.

Commencement/cessation of business

Expenses incurred before the commencement of business, or after the termination of the business, would not satisfy the general deduction formula. The reason is that these

expenses are incurred before or after (and not in) the production of the income respectively.

Concession for deduction of pre-commencement and incorporation expenses

A concession has been granted from YA 2004 to allow the deduction of all expenses of a revenue nature and not prohibited under s 15 (so-called "revenue expenses") that are incurred from the first day of the accounting year in which a business derives its first dollar of trading receipt. The concession, however, does not prevent a business from claiming a deduction for revenue expenses even earlier if it can prove that it has started trading before that year.

Businesses prohibited from claiming pre-commencement and incorporation expenses

The concession does not extend to companies to which s 10E applies (ie investment holding companies).

This concession addresses, to some extent, the difficulty of determining when a source of business or trading income could be said to have commenced.

Determining date of commencement of business

The IRAS has issued some guiding principles and examples on how to determine the commencement date of a business in its e-Tax Guide "Determination of the Date of Commencement of Business", published on 29 July 2014. The primary considerations are to ascertain:

- the actual regular activities carried on by a business, and
- the presence of the profit-making structure of the business that enables it to commence its day-to-day operations.

Section 14U deduction for pre-commencement and incorporation expenses

From YA 2012, businesses can claim a deduction for pre-commencement revenue expenses incurred in the accounting year immediately preceding the accounting year in which they earn the first dollar of trade receipts. This enhanced concession, legislated under s 14U of the Act, will provide certainty for businesses as well as ease compliance requirements.

(See IRAS e-Tax Guide "Concession for Enterprise Development — Deduction of Certain Expenses Incurred Before Business Revenue is Earned" (2nd Ed), published on 3 September 2014.)

Example 3

Assume Company ABC was incorporated on 1 June 2018 and has an accounting year-end of 31 December. It prepared its first financial accounts for the accounting period ended 31 December 2018. Assume further that Company ABC earns its first dollar of trade revenue on 15 May 2019. For YA 2020, Company ABC can claim a deduction for all revenue expenses incurred during the pre-commencement periods, ie from 1 June 2018 to 31 December 2018 and from 1 January 2019 to 14 May 2019 under the enhanced concession in s 14U.

expenditure incurred in producing the income. The Board held that, for an expenditure to be incurred in the production of income, it is both sufficient and necessary that the occasion of the expense should be found in whatever is productive of the income.

Applying this principle to the facts, the Board accepted the taxpayer's view that the settlement sum was incurred to deal with the liability arising out of the taxpayer's business activities, namely the manufacture and sale of the HIV test kits without a licence for the relevant period. Such activities were carried out with the objective of producing income. The legal expenses were also incurred for the purposes of the taxpayer's business activities, namely the manufacture and sale of the HIV test kits which were carried out with the objective of producing income.

Includes all closely connected expenses

In *Port Elizabeth Electric Tramway Company Ltd v CIR* 8 SATC 13, the taxpayer was a transport company and one of its drivers was killed in an accident. The taxpayer was required to pay compensation to the deceased's representatives and it incurred legal costs to contest the claim. The issue was whether the compensation and legal expenses were deductible. *Watermeyer* AJP applied the following principle:

> "The purpose of the act entailing expenditure must be looked at. If it is performed for the purpose of earning income, then the expenditure attendant upon it is deductible . . . The other question is, what attendant expenses can be deducted? How closely must they be linked to the business operations? Here, in my opinion, all expenses attached to the performance of a business operation *bona fide* performed for the purpose of earning income are deductible whether such expenses are necessary for its performance or attached to it by chance or are *bona fide* incurred for the more efficient performance of such operation provided they are so closely connected with it that they may be regarded as part of the cost of performing it".

The Court held that the need to make compensation to the deceased's representatives arose from the employment of drivers to run the company's vehicles for the purpose of earning income. The compensation payment was therefore closely linked to the income-earning operations and qualified for deduction. On the other hand, the legal expenses were not closely linked and were therefore not deductible.

May relate to future income

It is generally accepted that the words "in the production of the income" do not mean that before any expenditure can be deducted, it must have produced income in the year in which it was incurred; the expense would be deductible if the source of income to which it relates has already commenced. In the *Vallambrosa* case (see ¶7-220), the expenses claimed included maintenance, weeding and pest control expenses that were incurred on the entire rubber estate. Only 1/7 of the rubber trees in the estate at the

relevant time were rubber-producing (rubber trees take about six years before they reach maturity and begin to produce rubber). The Revenue therefore disallowed 6/7 of the expenses as this amount was not referable to the profit earned within the year. The Court, however, held that the expenses were fully deductible. Lord *Johnson* said:

> "It appears to me that, . . . , the trade . . . of the company is the cultivation and production for sale at profit of rubber and other tropical products. For this purpose, land had to be acquired, cleared, and drained, roads made, and buildings erected, before the cultivation began. What was expended for these purposes was I think capital expenditure. But once the cultivation began with the planting, expenditure on cultivation, production and marketing was I think revenue expenditure for the purpose of the trade".

DEDUCTIONS SPECIFICALLY ALLOWED

¶7-410 Interest

For interest expense to be deductible under the specific requirement of s 14(1)(a), it must be payable on capital employed in acquiring the income.

In *BFC v CIT* (2014) MSTC ¶70-033; [2014] SGCA 39, the Singapore Court of Appeal affirmed s 14(1)(a) as an exception to s 15(1)(c). The exception created by s 14(1)(a) is that any sum payable by way of interest is deductible and not prohibited by s 15(1)(c) if the Comptroller is satisfied that such interest was payable on capital employed in acquiring the income. The Court of Appeal clarified that interest payable on a loan taken for the purpose of purchasing or developing a capital asset, being capital in nature, would not be deductible because s 15(1)(c) would apply to prohibit a deduction. However, when the capital asset is employed in acquiring income, although the interest remains a capital expenditure, a deduction may be allowed under s 14(1)(a). The nature of the interest payable on a loan taken for the purpose of purchasing or developing a capital asset does not change when the capital asset is employed in acquiring income. See ¶7-220 for a discussion on the nature of interest expense.

Some principles on the deductibility of interest expense are summarised below.

Application of principal amount

The purpose to which the principal amount of the loan has been applied will determine whether or not the interest is deductible. If the money borrowed is used:

- for the purchase of business assets
- in meeting outgoings incurred in carrying on the business, or
- for the purchase of property from which income is derived,

the interest expense is deductible (*FC of T v Munro* (1926) 28 CLR 153).

Interest incurred before commencement of business

Expenses incurred before the commencement of a business are not incurred in the production of the income.

with the application of the TAM where only the costs of assets financed by specific interest-bearing loans can be excluded from the TAM computation.

Although interest restriction computations are not required to be submitted with the income tax returns, taxpayers are required to maintain sufficient documentation for submission upon the Comptroller's request. The Comptroller may make adjustments to disallow the interest expenses:

- if supporting documents are not kept, or
- where abuse of the TAM is found.

Penalties may also be imposed for an incorrect claim.

The TAM cannot be applied to an interest-bearing loan taken to fund a specific asset. For interest expense relating to an interest-bearing loan taken to fund a specific asset and that specific asset:

- is income producing, or
- is employed in acquiring income,

such interest expense incurred on such loan is deductible against the income. If the specific asset funded by such a loan is non-income producing, the interest expense is not deductible. For an interest-bearing loan taken to fund a specific asset, the method used to identify the deductible or non-deductible interest expense is known as the direct identification method.

(See IRAS e-Tax Guide "Income Tax: Total Asset Method for Interest Adjustment" published on 16 December 2016.)

The use of the TAM was endorsed by the Singapore Income Tax Board of Review and the Courts.

In *HHCL v CIT* (2005) MSTC 5,391, an issue before the Singapore Board of Review was whether interest expenses were deductible against dividend income derived by the taxpayer.

In the above case, the taxpayer's principal activity for YA 1985 to YA 1996 (the YAs in dispute) consisted of investing in shares, with substantial long-term investments in various subsidiaries and associated companies.

Both the taxpayer and the Comptroller had agreed on the use of the total assets method as a method of apportioning the interest expenses to be deducted. In relation to the expression in s 14(1), "source chargeable with tax under the Act", however, the taxpayer argued that all its share investment counters formed one source of income. The Comptroller, on the other hand, took the view that each share investment constituted a separate source of income.

The Board found that the word "source" in s 14(1) means a channel or stream of income and the dividends of each of the distinct share counters could constitute a distinct source of income for the purpose of deductibility. The Board cited with approval the Indian High Court case *Seth Shiv Prasad v Commissioner of Income Tax, UP* [1972] 84 ITR 15. In the latter case, the Indian High Court said that it is the shareholding held by the taxpayer that constitutes the source of dividend income, and that there can be as many sources of income as there are shareholdings. Shareholdings in different companies constitute different sources of income. The shares of one

company may be treated by the taxpayer as a single shareholding. The taxpayer may also, for good reason, treat the shares of the same company as constituting a number of separate and distinct shareholdings. The shares may be divided into groups defined by reference:

- to the circumstances in which they were acquired, or
- to the purpose for which they were purchased (see also ¶7-310 and ¶10-500).

The Board said that the concept of "source" as a channel or stream of income is consistent with the principle that s 14(1)(a) requires a direct nexus between expenses incurred and the source of income produced. Hence, only the interest expense incurred in producing the income from a separate counter of shares can be deducted against the dividend income generated for that respective shareholding.

The Board also said that the total assets method that the CIT adopted was legally tenable and reasonable and had been properly applied.

The taxpayer's appeals to the High Court and thereafter to the Court of Appeal (*JD Limited v CIT* (2006) MSTC 7,504; [2005] SGCA 52) were dismissed. The Court of Appeal agreed with the High Court that the heads of income enumerated under s 10(1) of the Act are simply descriptions of the types of income that s 10(1) enacts as being chargeable to tax, one of which is dividend income. The key is to look at the taxpayer's activities and/or property as the originating cause of income or the means by which the different types of gains or rewards enumerated and classified as "income" are derived.

The Court of Appeal approved of the principle in *Seth Shiv Prasad* (see above), and also rejected the taxpayer's submission that interest expenses are not deductible only in situations:

- where the expenses are incurred in the gaining of tax exempt income, or
- where the investment or capital itself has been extinguished.

The Court of Appeal held that where the taxpayer has borrowed funds, paid interest on these funds, and invested these funds, these investments must produce income for the interest expense to be deductible. Where the investment does not produce income, the interest expense on those investments is not deductible. The Court found that the Comptroller's adoption of the interest adjustment formula showed him to be mindful of the practical tax consequences faced by taxpayers and that he had not abused the administrative discretion conferred upon him by s 14(1)(a).

Withholding tax on interest paid to a non-resident lender

Where a Singapore borrower is liable to pay interest to a non-resident lender, and such interest is deductible as an expense in Singapore, the borrower is obliged to withhold tax:

- at the applicable tax rate, or
- at a lower rate where indicated by the Comptroller (s 45(1)).

Interest paid by a person outside Singapore to another person outside Singapore is not deductible unless withholding tax has been deducted from that interest under s 45 (s 15(1)(j)) (see ¶13-610 for details on withholding tax).

If accommodation is provided for 61 days and above in a calendar year, the cost of accommodation for the entire stay is taxable.

Deductible expenses

Only expenses:

- which are wholly and exclusively incurred by the entertainer in the production of the Singapore-sourced income, and
- which are not reimbursed by the payer

are deductible.

As a concession, the following costs incurred by the public entertainer are deductible:

- accommodation (excluding value of food) for short-term engagements of 60 days or less in any calendar year, and
- cost of airfare.

If the stay in Singapore is for 61 days and above in a calendar year, the cost of accommodation for the entire stay is not deductible.

Non-deductible expenses

- Private expenses (eg value of food and ground transfers to and from airport), and
- expenses incurred to put the public entertainer in a position to earn the income (eg transport expenses incurred from hotel to the venue of service and back).

(See IRAS' website at www.iras.gov.sg, updated as at 29 April 2016.)

Example 1

Ms Young, a public entertainer, has a contract to perform in Singapore for 20 days in 2019 for a fee of $10,000. She is provided with hotel accommodation at $200 a day. Ms Young pays her own airfare of $1,000. She does not incur any other expenses. Her tax liability for YA 2020 would be as follows:

	$
Fees	10,000
Hotel accommodation provided (not taxable by concession)	—
	10,000
Less: Airfare paid by the public entertainer (concession)	(1,000)
Taxable income	9,000
Withholding tax @ 10%	900

If the contract provides for Ms Young's Singapore income tax to be borne by the sponsor, Ms Young will be taxable on that benefit as it constitutes income in her hands. Her net-of-tax amount will be $9,000, and the calculations are as follows:

	$
Taxable income, as above	9,000
Add: Income tax borne by sponsor ($9,000 × 10/90)	1,000
Total taxable income	10,000
Withholding tax @ 10%	1,000

Non-resident public entertainer exercising employment in Singapore

A public entertainer does not qualify for s 13(6) exemption merely because:

- he is an employee by status, and
- his visit to Singapore does not exceed 60 days in a calendar year (s 13(7)).

The s 13(6) exemption would apply only if, as an additional condition, his visit was substantially supported from the public funds of the Government of a foreign country.

In practice, foreign actors coming to Singapore in connection with the shooting of scenes are normally not regarded as public entertainers for tax purposes. If such a foreign actor is an employee by status, the tax treatment set out in ¶13-130 below will apply.

¶13-130 Relief for non-resident employees

A non-resident employee is assessed to tax on income derived from the exercise of employment in Singapore:

- at either a flat rate of 15%, or
- on the basis that he were resident,

whichever gives a higher tax liability (s 40B).

Taxation of non-resident employment income on resident basis

From YA 2018, in calculating the amount of tax payable on the basis that the non-resident employee were a resident, the cap of $80,000 on the total amount of personal reliefs will apply (s 40B(3A)).

Taxation of non-resident employment income at 15%

The 15% tax is applied on employment income:

- net of deductible expenses, but
- without any deduction for personal reliefs.

Non-employment income

All other Singapore-sourced income is subject to 22% tax from YA 2017, unless it:

- qualifies for a reduced tax rate, or
- is exempt from tax (eg interest income from a fixed deposit with an approved bank).

¶13-140 Relief for non-resident SRS members

A non-resident SRS member is entitled to s 40C relief for the withdrawals he makes from his SRS account which are deemed to be income under s 10L. The effect of s 40C relief is that the amount of the non-resident's SRS withdrawals deemed income (the amount is 50%) is assessed:

- at the higher of 15% flat rate, or
- on the basis that he were resident.

See the IRAS' website at www.iras.gov.sg for numerical examples.

Taxation of non-resident SRS member on resident basis

From YA 2018, in calculating the amount of tax payable on the basis that the non-resident SRS member were a resident, the cap of $80,000 on the total amount of personal reliefs will apply (s 40C(3A)). In order to claim this relief, the non-resident has to file his income tax return.

Withholding tax on income received by non-citizen non-resident SRS member

In the case of a non-citizen non-resident SRS member, the following amounts are subject to 22% withholding tax from YA 2017:

- 50% of certain SRS withdrawals deemed income to him (s 45E), and
- 50% of the total value of investments made using funds from his SRS account (s 45EA).

¶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.

From YA 2018, in calculating the amount of tax payable on the basis that the non-resident individual were resident, the cap of $80,000 on the total amount of personal reliefs will apply (s 40D(3A)).

¶13-300 Deemed-source provisions

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

- gains or profits from trading operations partly carried on by a non-resident person in Singapore (s 12(1))
- 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))
- 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)
- income from employment exercised in Singapore regardless of whether such income is received in Singapore (s 12(4)) (see ¶5-110ff)
- income from employment exercised outside Singapore on behalf of the Government (s 12(5))
- interest and other related payments (s 12(6)) (see ¶13-610)
- 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
- commission or other payments to a licensed international market agent for organising or conducting a casino marketing arrangement with a casino operator in Singapore (s 12(8)).

Section 12 is not itself a charging provision; s 10(1) is (see ¶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 ¶3-100).

Subject to certain conditions in s 12(6A) and 12(7A), certain kinds of income are treated as not deemed derived from Singapore under s 12(6) and 12(7).

Historical Note: Ministry of Finance Press Statement 21 December 1977

The 1977 Press Statement was codified and expanded on in s 12(6A) and 12(7A), which took effect from 29 December 2009 (see further ¶13-610, ¶13-630 and ¶13-640). For the full text of the Press Statement, see the 2018/19 edition of this book.

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 certain 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. The

Table 1: Payments of income subject to withholding tax in Singapore (with applicable tax rates and deemed-source provisions)

Deemed-source provisions	*Income*	*Tax rate*	*Withholding tax provisions*
s 12(8)	• commission or other payment paid to licensed international market agent for organising or conducting a casino marketing arrangement with a casino operator in Singapore	3%	s 45H

Notes:

In Table 1, the final tax rates for payments of income under s 12(6) and 12(7) apply only if the following **conditions** are satisfied:

- the payment concerned is not derived from any trade, business, profession (TBP) or vocation carried on or exercised by the non-resident person in Singapore, and
- the payment is not effectively connected with any permanent establishment (PE) of the non-resident person in Singapore.

The final tax rates may also be lower than the 10% or 15% indicated (as the case may be), if provided by an applicable tax treaty.

With effect from 17 February 2012, certain persons are exempt from the requirement to withhold tax on payments of interest and other income under s 12(6) to non-resident persons under specified circumstances (s 45I) (see ¶13-610).

General withholding tax rules

Section 45 contains the withholding tax rules on interest. The provisions of s 45 apply similarly to other payments of income listed above by virtue of s 45A to 45H.

Where a payer is "liable to pay" any of the above income to another person "not known to him to be resident in Singapore", the payer is required to withhold tax at the applicable rate. The recipient therefore receives only the amount net of the withholding tax (see Example 5).

Deadline for payment of tax withheld

Where tax has been withheld from payments made to a non-resident person:

- the IRAS must be notified immediately in writing of the deduction, and
- the amount withheld must be paid to the IRAS within the specified period (s 45(1) and 45(4)).

There are penalties for failure to withhold tax and for late payment of the tax withheld.

Where the payment of income to a non-resident person is on or after 1 July 2012, the tax withheld must be paid over to the IRAS **by the 15th day of the second month following** the date of payment to the non-resident.

The Comptroller of Income Tax (the "Comptroller") has the discretion to:

- allow banks and financial institutions to give notice and make payment of withholding tax within such period as is acceptable to him, and
- require any person to withhold and account for tax at a higher or lower tax rate (s 45(2)).

With effect from 29 December 2016, s 45(1C) and 45(1D) enable:

- the Minister for Finance to make rules to prescribe a different withholding tax rate from that set out in s 45 for any person or class of persons, and
- the Comptroller to allow any person or class of persons (besides banks and financial institutions):
  - to give him a notice of deduction of tax within a different period from that specified in s 45, and
  - to pay him the deducted tax within a different period from that specified in s 45.

The IRAS has clarified that:

- For a payment of income subject to final withholding tax of 10% or 15%, the deduction of tax would be based on the gross amount of payment.
- Where the tax on the payment is not a final tax, the deduction of tax would be based on the gross amount of payment made to the non-resident. However, where written permission has been obtained from the IRAS before payment is made, the deduction of tax could be based on:
  - a lower tax rate, or
  - a lower amount of payment.
- Where there is a dispute with the Comptroller as to whether payment to a non-resident is subject to withholding tax, the payer is still obliged to withhold tax on the payment pending the resolution of the dispute. Otherwise, the payer:
  - will be held accountable for any tax due, and
  - will be liable for penalties if the tax is not paid within the prescribed period.

Final tax versus non-final tax

At the outset, we have explained the terms "final tax" and "non-final tax" in Table 1.

Under the current tax rules:

- Tax that is subject to withholding at:
  - the normal corporate rate of 17% (for non-individuals), or
  - 22% from YA 2017 (for non-resident individuals)

  is **not a final tax**. This means that the non-resident recipient of the income may file a tax return with the IRAS to claim deduction for expenses wholly and exclusively incurred in the production of the income and claim a refund of the tax overpaid.

In practice, however, where the income falls under a non-s 10(1)(a) source, eg director's fees (s 10(1)(b) income), deductions for expenses are rarely claimed and allowed.

- Tax that is subject to withholding at some other reduced rate such as 10% or 15% is a **final tax**. This means that the non-resident recipient of such income cannot file a tax return to claim deductions for expenses incurred (s 43(3), 43(3A) and 43(3B)).

  As an exception, proceeds derived by a non-resident real property trader from the sale of real property in Singapore are subject to withholding tax at 15% but this tax is non-final.

Withholding tax rates

Depending on the nature of the payment, the withholding tax rate applicable to a payment made to a non-resident could be:

- 10%, 15%, 17% or the rate specified under a tax treaty (for non-individuals)
- 10%, 15%, 22% from YA 2017 or a lower tax rate specified under a tax treaty (for individuals).

Table 1 shows that among the deemed-source provisions of s 12, only s 12(6) and 12(7) payments are subject to withholding tax in s 45 and 45A:

- 10% final withholding tax applies to:
  - royalties or other payments in one lump sum or otherwise for the use of or the right to use any movable property, and
  - payments for the use of or the right to use scientific, technical, industrial or commercial knowledge or information (ie know-how payments)
- 15% final withholding tax applies to:
  - interest, commissions, fees and any other payments in connection:
    (i) with any loan or indebtedness, or
    (ii) with any arrangement, management, guarantee or service relating to any loan or indebtedness, and
  - rent or other payments for the use of any movable property.

For the above final withholding tax rates of 10% or 15% to apply, the income:

- must not be derived from any TBP or vocation carried on or exercised by the non-resident person in Singapore, and
- must not be effectively connected with any PE of the non-resident person in Singapore (s 43(3)).

The non-final withholding tax rate of:

- 17% (for non-individuals), or
- 22% from YA 2017 (for non-resident individuals)

would apply to the following payments made in the basis period ending in 2009 and subsequent years:

- technical assistance fees (show-how payments), and
- management fees.

Non-resident directors' remuneration is subject to withholding tax at 22% from YA 2017 (s 45B).

Before the details on these and other payments listed in Table 1 are explained further in this chapter, the following relevant aspects which pertain generally to s 12(6) and 12(7) are first set out in turn:

- Circumstances in which income is deemed to have been paid, for withholding tax purposes.
- General tax incentive under s 13(4) for s 12(6) and 12(7) payments.
- Tax consequences of breach of condition imposed under s 13(4) incentive (s 45AA).

Income deemed to have been paid

Withholding tax applies not only to actual payments of the income made to a non-resident person but also to payments deemed to have been made.

A payment is deemed to have been made to a person if it is:

- reinvested
- accumulated
- capitalised
- carried to any reserve or credited to any account, or
- otherwise dealt with on behalf of that person (s 45(8)(b)).

Example 4

If a non-resident person instructs a Singapore resident company paying royalties to him to invest the amount in shares instead, the royalties will be **deemed** to have been **paid** to him even though he did not actually receive payment.

For withholding tax purposes, the **date of payment** is the **earliest** of the following dates (s 45(8)(b)):

- when the payment is due (based on the contract or agreement) ("liable to pay" in the language of s 45(1))
- the date of deemed payment, or
- the date of actual payment.

The IRAS has stated that:

- in the absence of a contract or an agreement, the date of invoice would be taken to be the date the payment is due, and
- in the case of director's fees, the date of payment is the date when the fees are voted and approved at the company's annual general meeting.

applies to the following income derived by any company (s 43N; Income Tax (Concessionary Rate of Tax or Exemption for Income derived from Debt Securities) Regulations, Rg 32):

- interest from any QDS
- discounts from any QDS issued from:
  - 17 February 2006 to 31 December 2023, and
  - 27 February 2004 to 16 February 2006, the tenure of which is one year or less
- payouts from qualifying Islamic debt securities issued during the period from 1 January 2005 to 31 December 2023
- income from securities borrowing and lending arrangements
- income from borrowing and lending local securities, and
- prepayment fees, redemption premiums or break costs from QDS issued during the period from 15 February 2007 to 31 December 2023.

Exemption for non-residents

Interest derived from QDS is exempted from tax in the hands of the following non-residents:

- non-residents without any PE in Singapore (s 13(1)(a)(i)), and
- non-residents who carry on any operation in Singapore through a PE in Singapore where the funds used by that person to acquire the QDS are not obtained from the operation (s 13(1)(a)(ii)).

The abovementioned non-residents are also not taxed on:

- discounts from any QDS issued during the period (s 13(1)(aa)):
  - from 17 February 2006 to 31 December 2023, and
  - from 27 February 2004 to 16 February 2006, the tenure of which is one year or less
- payouts from qualifying Islamic debt securities issued during the period from 1 January 2005 to 31 December 2023 (s 13(1)(ab)), and
- prepayment fees, redemption premiums or break costs from QDS issued during the period from 15 February 2007 to 31 December 2023 (s 13(1)(ba)).

Sunset clause

As announced in the 2018 Budget, to continue to support the development of the local debt market, the QDS scheme will be extended to 31 December 2023.

The QDS+ scheme will be allowed to lapse after 31 December 2018. However, debt securities with tenure beyond 10 years and Islamic debt securities that are issued:

- on or before 31 December 2018 can continue to enjoy the tax concessions under the QDS+ scheme if the conditions of the QDS+ scheme are satisfied, and
- after 31 December 2018 can enjoy tax concessions under the QDS scheme if the conditions under the QDS scheme are satisfied.

PROJECT FINANCE

¶18-230 Project finance

The tax incentive schemes for project finance other than the Financial Sector Incentive-Project Finance (FSI-PF) scheme were extended to 31 December 2022. They were as follows:

- Exemption of qualifying income from QPDS issued during the period from 15 February 2007 to 31 December 2022 (s 13(1)(b)(ii)).
- Exemption of qualifying income from offshore qualifying infrastructure projects/assets received by approved entities listed on the SGX on or before 31 December 2022 (see IRAS e-Tax Guide "Income Tax: Tax Exemption under Section 13(12) for Specified Scenarios, Real Estate Investment Trusts and Qualifying Offshore Infrastructure Project/Asset" (5th Ed), published on 31 March 2017).
- Remission of stamp duty payable on instruments of transfer executed during the period from 1 January 2012 to 31 March 2017 relating to qualifying infrastructure projects/assets of qualifying entities listed or to be listed on the SGX. The remission for stamp duty payable on an instrument of transfer relating to qualifying infrastructure projects/assets to qualifying entities listed or to be listed on the SGX was allowed to lapse after 31 March 2017.
- Concessionary tax rates of:
  - 10% for awards granted from 1 January 2004 to 31 March 2016
  - 12% for awards granted from 1 April 2016 to 31 May 2017, and
  - 13.5% for new awards granted or existing awards renewed, on or after 1 June 2017

  on qualifying income derived by an approved trustee manager/fund manager which was approved during the period from 1 January 2012 to 31 December 2022 from managing qualifying SGX-listed business trusts/infrastructure funds in relation to qualifying offshore infrastructure projects/assets (s 43ZD, reg 5 of the Income Tax (Concessionary Rate of Tax for Income Derived from Managing Qualifying Registered Business Trust or Company) Regulations 2009, S 155/2009).

Although the FSI-PF was not extended beyond 31 December 2011, a company that has been approved as an FSI-PF company on or before 31 December 2011 can continue to enjoy the tax concession under the FSI-PF award until the expiry of the award. An FSI-PF company approved on or before 31 December 2011 may enjoy the concessionary tax rate of 5% on qualifying income derived from:

- arranging, underwriting or distributing any QPDS
- arranging or underwriting any qualifying project loan, and
- providing project finance advisory services relating to a qualifying infrastructure project.

ASIAN CURRENCY UNIT

¶18-250 Asian Currency Unit

With the introduction of the FSI scheme, all ACUs are automatically granted the FSI-ST award from 1 January 2004 to 31 December 2018. The FSI scheme has been further extended for another five years to 31 December 2023 as announced in the 2018 Budget. All income derived from ST qualifying activities is taxed at the concessionary tax rates of:

- 12%, or
- 13.5% for new awards granted or existing awards renewed, on or after 1 June 2017.

The ACUs are separate departments in banks that are licensed to handle Asian dollar business. These units are allowed to:

- accept external deposits from non-residents and residents of Singapore
- lend funds to residents of scheduled territories as well as outside the scheduled territories, and
- lend funds to banks in Singapore and other ACUs.

Asian dollars, an offshoot of Euro dollars, are similar to Euro dollars except that they are held in Asia. They comprise:

- US dollars
- German deutsche marks
- Swiss francs
- Japanese yen, etc

deposited in Singapore and lent out to the Asian region. These "offshore funds" are deposited outside their respective countries and provide a vehicle for regional financing. The main depositors are:

- multinational corporations
- regional companies
- government bodies
- Asian central banks
- foreign banks, and
- businessmen.

The borrowers of Asian dollars are housed mainly in the Asia Pacific region and comprise:

- local and regional companies
- development and commercial banks
- government central banks, and
- export orientated firms.

Singapore has given several tax concessions to encourage the growth of the Asian dollar market in Singapore and the region. These concessions apply to the offshore

income derived by taxpayers from operations carried on in the Asian dollar market. The meaning of "offshore income" has been extended to all types of income derived from ACU operations except for:

- income derived from exchange profits arising from transactions in Singapore dollars, or
- income derived from transactions with domestic banking units and residents.

TRUSTEE SERVICES

¶18-270 Approved trustee company

An approved trustee company is subject to a concessionary tax rate of 10% on income derived from the provision of qualifying:

- trustee and custodian services (from 1 April 2011, these include trustee and custodian services in respect of the issue of units to foreign collective investment schemes and foreign business trusts)
- trust management, and
- administration services (s 43J; Income Tax (Concessionary Rate of Tax for Approved Trustee Companies) Regulations, Rg 21).

Award recipients approved on or after 1 April 2011 are granted a 10-year award tenure. All award recipients approved prior to that automatically transited to the new framework on 1 April 2011 and they enjoy the award for a 10-year period ending on 31 March 2021.

A sunset clause of 31 March 2016 was introduced to allow a regular review of the relevance of the scheme.

With effect from 1 April 2016, the tax incentive for trustee companies has been subsumed under the FSI scheme as the FSI-Trustee Companies (FSI-TC) scheme expired on 31 December 2018. The FSI scheme has been further extended for another five years to 31 December 2023 as announced in the 2018 Budget.

Concessionary tax rates of:

- 12% apply to awards granted from 1 April 2016 to 31 May 2017, and
- 13.5% for new awards granted or existing awards renewed, on or after 1 June 2017.

Existing incentive recipients will continue on their current awards at the respective concessionary tax rates until the expiry of their awards. Existing incentive recipients may apply for renewal of their awards under the FSI-TC scheme after the expiry of their awards.

Both new applicants and existing incentive recipients applying for renewal of their awards will be assessed on their commitment to establish or expand their operations in Singapore including the number and projected growth of professionals performing trustee, trust administration and custodian services.

From 1 April 2016, the scope of qualifying activities under the FSI-TC scheme was expanded to include the provision of custodian services in respect of any:

- foreign equity securities
- units in a foreign collective investment scheme
- units in a foreign business trust
- QDSs, or
- foreign debt securities.

Existing incentive recipients may enjoy the expanded scope of qualifying activities for income derived on or after 1 April 2016.

COMMODITY FUTURES MARKET

¶18-300 Incentives for commodity futures market

Historical Note: Up to 31 December 2010

Incentives for futures members of the SGX (see ¶18-310) and members of the Singapore Commodity Exchange Limited (SICOM) (see ¶18-320) were discontinued on 31 December 2010. The tax incentive schemes have been streamlined for better incentive administration. From 1 January 2011, new incentive applicants which engage in qualifying transactions have to apply for the FSI scheme.

As a transition measure, futures members of the SGX and members of the SICOM who were incentivised under the previous tax incentives schemes were allowed to transit to the FSI-ST scheme automatically on 1 January 2011 provided they notified the MAS by 31 July 2010 of their intent to transit. They would not be subject to the approval criteria for the FSI-ST award at the point of transition in January 2011. However, they would be subject to the prevailing FSI-ST renewal criteria when they applied for renewal of their awards in December 2013.

¶18-310 Futures member of the Singapore Exchange

Historical Note: Up to 31 December 2010

The concessionary tax treatment for futures members of the SGX for qualifying income derived on or before 31 December 2010 set out in s 43D was repealed on 29 December 2016. For details of the concessionary tax treatment for qualifying income derived before 1 January 2011, see the 2017/18 edition of this book.

¶18-320 Member of the Singapore Commodity Exchange Limited (SICOM)

Historical Note: Up to 31 December 2010

The concessionary tax rate of 10% on qualifying income derived on or before 31 December 2010 by corporate members of the SICOM set out in s 43K was repealed on 29 December 2016. For details of the concessionary tax treatment for qualifying income derived before 1 January 2011, see the 2017/18 edition of this book.

FINANCIAL AND COMMODITY DERIVATIVES MARKET

¶18-330 Commodities derivatives trading company

Upon the expiry of the commodities derivatives trading (CDT) company scheme on 26 February 2009, s 43S was repealed on 29 December 2016 and the CDT scheme was extended and subsumed under the FSI-DM scheme for the period from 27 February 2009 to 31 December 2013 (both dates inclusive), under the FSI-DM (CDT) award. The FSI-DM scheme was extended for five years to 31 December 2018. As announced in the 2018 Budget, the FSI scheme has been further extended for another five years to 31 December 2023.

¶18-335 Clearing member of Singapore Clearing House

Historical Note: 17 February 2006 to 16 February 2011

Prior to 17 February 2006, members of any clearing facility were subject to tax at 20% on income derived from the provision of clearing services. To promote OTC derivatives clearing activities in Singapore, approved clearing members of a Singapore clearing house were subject to tax at a 5% concessionary rate on income derived from the provision of OTC derivatives clearing services in Singapore for a period of five years (s 43V (repealed)).

The window period for clearing members to qualify for this concessionary tax rate was from 17 February 2006 to 16 February 2011.

¶18-340 Approved securities company

The approved securities company incentive has been merged into the FSI scheme from 1 January 2004 (see ¶18-160 to ¶18-180).

FUND MANAGEMENT

¶18-350 Fund management

From 1 January 2004, tax incentives granted to the fund management industry are merged into the FSI scheme. Approved fund managers other than those that have been granted tax exemption transited to the FSI-AFM scheme and were granted the ST award from 1 January 2004 up to the expiry date of their existing awards. These fund managers are eligible for the:

- 10% concessionary tax rate for awards granted from 1 January 2004 to 31 March 2016
- 12% concessionary tax rate for awards granted from 1 April 2016 to 31 May 2017, and
- 13.5% concessionary tax rate for new awards granted or existing awards renewed, on or after 1 June 2017.

Approved fund managers that have been granted tax exemption will not be included in the FSI scheme until their existing awards expire. Upon expiry of their award, they can apply for the FSI-AFM award to be taxed at the rates of 10%, 12% or 13.5% on the income from ST activities.

Singapore Variable Capital Companies

As announced in the 2018 Budget, the MAS would study and implement a regulatory framework for Singapore Variable Capital Companies (S-VACCs) to further develop and strengthen Singapore's position as a hub for both fund management and fund domiciliation. An S-VACC is a new structure designed for collective investment schemes and will accommodate a variety of traditional and alternative asset classes and investment strategies. The *Variable Capital Companies Act* was passed by Parliament on 1 October 2018 and assented to by the President on 31 October 2018. It will come into operation on a date that the Minister appoints by notification in the *Gazette*.

A tax framework for S-VACC will also be introduced to complement the S-VACC regulatory framework, as follows:

(a) an S-VACC will be treated as a company and a single entity for tax purposes

(b) tax exemption under s 13R and s 13X will be extended to S-VACCs

(c) the 10% concessionary tax rate under the FSI-FM scheme will be extended to approved fund managers managing an incentivised S-VACC, and

(d) the existing GST remission for funds will be extended to incentivised S-VACCs.

The conditions under the existing schemes in (b), (c) and (d) above remain the same.

The S-VACC tax framework will take effect on or after the date the S-VACC regulatory framework comes into operation.

Enhanced-Tier Fund Tax Incentive Scheme

The Enhanced-Tier (ET) Fund Tax Incentive Scheme, introduced in 2009, aims to better position Singapore as a hub for fund management. The scheme enhances the existing fund management incentives and is available from 1 April 2009 to 31 March 2019. The ET fund can be constituted as a:

- company
- trust, or
- limited partnership.

As announced in 2018 Budget, to cater for more diverse fund structures, tax exemption under the ET Fund Tax Incentive Scheme will be extended to all fund vehicles constituted in all forms. Besides companies, trusts and limited partnerships, all fund vehicles will be able to qualify for the ET Fund Tax Incentive Scheme if they meet all qualifying conditions. This change will take effect for new awards approved on or after 20 February 2018.

All other conditions of the scheme remain the same.

Qualifying conditions

It must have a minimum fund size of $50m at the point of application, among other conditions. There is no limit as to the amount of investments that a Singapore investor can place in the ET fund.

Tax exemption

An approved ET fund enjoys tax exemption on specified income derived from designated investments for the entire duration of the fund. See ¶18-160 for the list of designated investments.

Income derived on or after 21 February 2014 from such investments will also enjoy tax exemption.

Unabsorbed losses from specified income and designated investments

Any expenses incurred in excess of its specified income and any loss arising from the sale of designated investments will be disregarded and cannot be set off against other taxable income of the ET fund.

Master and feeder funds

In 2014, the ET Fund Tax Incentive Scheme was extended to master and feeder funds by treating master and feeder funds as one fund vehicle structure subject to conditions. This is to recognise that fund management activities can be carried out via a master and feeder fund structure where the feeder fund serves solely as a pooling vehicle with the master fund undertaking the actual investing and trading activities.

A master and feeder fund structure must meet the sum of the economic commitments expected from each fund entity collectively.

Example 1

A master and feeder fund structure comprising one master and three feeder funds deriving taxable income and/or trade must:

- have a minimum fund size of $200m (ie 4 × $50m) at the point of application, and
- incur an aggregate of at least $800,000 (ie 4 × $200,000) local business spending in each basis period relating to any YA.

The ET Fund Tax Incentive Scheme was enhanced in the 2015 Budget for master-feeder fund structures that hold their investments via Special Purpose Vehicles (SPVs). This is to recognise that SPVs are used for commercial and legal reasons. From 1 April 2015, the ET Fund Tax Incentive Scheme is extended to:

- master-feeder-SPV, and
- master-SPV fund structures

subject to the following conditions in addition to existing conditions under the incentive scheme:

- the master fund must be a Singapore-incorporated or constituted or registered entity, as the case may be, and is regarded as a resident of Singapore for Singapore income tax purposes for each basis period

- the SPVs must be set up as companies and are wholly owned by the master fund, and
- the economic commitments have to be met on a multiple-fold basis.

Any subsequent addition of SPV(s) to an approved master-feeder-SPV or master-SPV fund structure must be approved by the MAS. The new economic commitments on a multiple-fold basis must be met at the point of the addition of SPV(s).

Example 2

If a one-master-one-feeder-one-SPV fund structure were to add another SPV:

- the minimum fund size would be $200m (ie 4 × $50m) at the point the SPV is added, and
- the fund structure has to incur at least $800,000 (ie 4 × $200,000) of local business spending in each basis period relating to any YA, starting from the basis period the SPV was added.

Once approved, each entity in the fund structure can enjoy the tax exemption for the life of the fund. If the fund structure fails to satisfy any specified condition for any basis period, all the entities in the fund structure will not enjoy the tax exemption on the specified income derived from designated investments for that YA relating to the basis period concerned. However, if the fund structure is able to satisfy all the specified conditions in any subsequent basis period, it can continue to enjoy the tax exemption in the YA relating to that subsequent basis period.

When an entity in an approved fund structure fails to satisfy any condition permanently, the MAS must be given advance notice of the withdrawal of that entity from the scheme. With the withdrawal of an entity from the approved fund structure, the economic commitments of the approved fund structure will also be revised downwards accordingly.

Sunset clause

A sunset clause was introduced for both the ET and the existing fund management incentives at the incentive scheme level. Both incentives will expire on 31 March 2019.

2019 Budget announcement

To continue to grow Singapore's asset management industry, the tax concessions relating to qualifying funds will be extended till 31 December 2024. Qualifying funds comprise:

- basic tier funds (s 13CA and 13R schemes), and
- ET funds (s 13X scheme).

Key refinements to the s 13CA, 13R and 13X schemes have been announced in the 2019 Budget to keep the schemes relevant and to ease the compliance burden.

Basic tier funds (s 13CA and 13R schemes)

To qualify as a basic tier fund, the fund has to meet certain conditions, including not having 100% of the value of its issued securities beneficially owned, directly or indirectly, by "Singapore persons", which is defined in the Income Tax (Exemption of Income of Prescribed Persons Arising from Funds Managed by Fund Manager in Singapore) Regulations to include persons who are:

- citizens of Singapore
- residents of Singapore, or
- PEs in Singapore.

As announced in the 2019 Budget, this condition that a basic tier fund must not have 100% of the value of its issued securities beneficially owned, directly or indirectly, by Singapore persons will be removed with effect from YA 2020.

ET funds (s 13X scheme)

For ET funds approved as a collective structure, the master fund in the approved structure can have up to two tiers of SPVs. Such SPVs must be wholly owned (directly or indirectly) by the master fund and can only take the form of companies.

Separately, for real estate, infrastructure and private equity funds applying to be ET funds, the minimum fund size requirement to be met at the point of application may be determined based on the amount of committed capital (committed capital concession).

As announced in the 2019 Budget, the ET fund scheme will be enhanced to:

- include co-investments, non-company SPVs and more than two tiers of SPVs
- allow debt and credit funds to access the committed capital concession, and
- include managed accounts. A managed account is a dedicated investment account where an investor places funds directly with a fund manager without using a separate fund vehicle.

These enhancements will apply on and after 19 February 2019.

Tax exemption on specified income derived from designated investments and withholding tax exemption

Qualifying funds are granted the following tax concessions subject to the following conditions:

- tax exemption on specified income derived from designated investments, and
- WHT exemption on interest and other qualifying payments made to non-resident persons (excluding PEs in Singapore).

As announced in the 2019 Budget, the list of designated investments will be expanded by:

- removing the counter-party and currency restrictions, and
- including investments such as credit facilities and advances, and Islamic financial products that are commercial equivalents of designated investments.

The condition for unit trusts to wholly invest in designated investments will be removed.

With effect from 1 January 2020

To make sure that the tax system remains fair and resilient in a digital economy, it was announced in the 2018 Budget that GST will be imposed on imported services on or after 1 January 2020.

The new rules do not affect the importation of goods into Singapore. Imported goods will continue to be subject to GST in Singapore if its value exceeds $400.

B2B imported services will be taxed via the **RC mechanism** (see ¶21-252).

On the other hand, the taxation of B2C imported services will give rise to the issue whether the overseas vendor is required to register under the **OVR regime** in Singapore (see ¶21-255).

Approved Contract Manufacturer and Trader (ACMT) scheme

Under this scheme, import GST is suspended for an ACMT when the ACMT imports consigned goods belonging to its overseas clients. Furthermore, the ACMT performing value-added manufacturing activities substantially for its overseas client can disregard the supply of value-added service to its non-GST registered client if the treated or processed goods are:

- delivered to another ACMT, or
- exported to the overseas client's foreign customer.

If the ACMT delivers the goods on behalf of its overseas client to customers in Singapore, the ACMT must charge and account for GST on the value of the sale between the overseas client and the local customer (s 37A and reg 46 of the GST (General) Regulations).

Since its introduction, the ACMT scheme has been enhanced as follows:

- from 1 October 2011, services rendered on failed or excess production under the ACMT scheme will be disregarded
- from 1 October 2011, an ACMT is allowed to recover GST on local purchases of goods made by the overseas client for use in the contract manufacturing process
- from 1 January 2012, subject to detailed conditions, an ACMT also enjoys GST suspension on the importation of its own goods belonging to its overseas principals for whom it is acting as an agent either under s 33(2) or s 33A
- from 1 January 2015, an ACMT (besides certain other GST-registered traders) further qualifies for GST suspension under s 33B on re-importations of goods:
  - which it previously sent abroad for value-added activities (eg testing, repair, fabrication, refining or assembly but excluding logistics services, leasing or similar activities), and
  - which belong to its local customer or GST-registered overseas customer.

  This is intended to reduce the burden of irrecoverable GST and ease compliance for businesses.

(See IRAS e-Tax Guides:

- "GST: Approved Contract Manufacturer and Trader (ACMT) Scheme", published on 16 July 2018, and
- "GST: Claiming of GST on Re-import of Value-added Goods" (2nd Ed), published on 25 May 2016.)

Historical Note: Position before 1 January 2015

For the position before 1 January 2015, see the 2015/16 edition of this book.

GST measures for the biomedical industry

From 1 October 2011, the following GST measures apply to the biomedical industry:

- GST relief is granted upfront on all clinical trial materials imported into Singapore, regardless of whether the clinical trial materials are for local testing, re-export or for disposal in Singapore. This measure will help encourage clinical research activities in Singapore and ease the GST compliance burden.
- The ACMT scheme is extended to qualifying biomedical contract manufacturers.

(See IRAS e-Tax Guide "GST Guide for the Biomedical Industry" (3rd Ed), published on 11 November 2016.)

Historical Note: Position before 1 October 2011

For the GST treatment before 1 October 2011, see the 2017/18 edition of this book.

¶21-252 Reverse charge (RC) mechanism

Under the RC mechanism which applies to **B2B supplies** made on or after 1 January 2020, only businesses that:

- are GST-registered persons who are not entitled to full input tax credit (eg GST-registered charities and voluntary welfare organisations that receive non-business receipts) or who belong to GST groups that are not entitled to full input tax credit, and
- non-GST-registered persons who procure services from overseas suppliers exceeding $1m in a 12-month period and who would not be entitled to full input tax credit even if GST-registered

need to apply RC.

The policy reason to exclude businesses that can claim full refund of the GST they incur on their purchases, including imported services, is to avoid unnecessary compliance burden for them — such businesses can therefore avoid the need to pay GST for the imported services only to be able to claim the GST in full subsequently. It is expected that most local businesses which purchase services from overseas suppliers will therefore not be affected by the RC mechanism.

The RC mechanism requires the local business customer to account for GST to the IRAS on the services it imports as if it were itself the supplier of the services. It can in

turn claim the GST accounted for as its input tax, subject to the input tax recovery rules.

Transactions that are not disregarded for the purposes of reverse charge

For the purposes of RC:

- inter-branch transactions (ie a transaction between a Singapore branch and its offshore head office, or the Singapore head office and its offshore branches), and
- intra-GST group transactions (ie transactions between a Singapore member and its offshore members who are GST-registered under s 30; see ¶21-430)

are not disregarded.

Services that are excluded from reverse charge

The new **Eighth Schedule** (see ¶21-115) contains the services that are excluded from the RC mechanism. RC businesses must account for GST on all imported services other than:

- services that qualify as exempt supplies under the Fourth Schedule (see ¶21-530)
- services that qualify for zero-rating under s 21(3) if the services had been made to them by a taxable person belonging in Singapore (see ¶21-510)
- services that are directly attributable to taxable supplies (this exclusion applies only to RC businesses that are not prescribed a fixed input tax recovery rate or a special input tax recovery formula), and
- services that are supplied by a foreign country's government where the supply of those services would, if made by the Singapore Government, be a prescribed supply under s 28(1) (see the GST (Non-Taxable Government Supplies) Order for the prescribed supplies).

Moreover, RC does not apply to a supply of services that has been taxed previously (see Example 6 in the IRAS e-Tax Guide "GST: Taxing imported services by way of reverse charge" (1st Ed), published on 4 February 2019). This is a supply of services that was previously made by a taxable person who belongs in Singapore, to the overseas supplier who subsequently supplied such services to the recipient, and tax was charged on such previous supply (not being zero-rated or exempt) to the overseas supplier.

Value of reverse charge supplies

As for the **value of an RC supply**, see ¶21-310.

"Directly benefit" condition

With the adoption of RC, the "directly benefit" condition under the zero-rating provisions of s 21(3)(j), 21(3)(k), 21(3)(s) and 21(3)(y) was also amended to zero-rate a supply of service to the extent that such a service directly benefits:

- an overseas person, or
- a GST-registered person in Singapore.

Zero-rating does not apply if the services directly benefit any non-GST-registered recipients (including private individuals) in Singapore (see also ¶21-510).

IRAS' guidance on the reverse charge

For information concerning whether a person (GST-registered or non-GST-registered) is subject to RC, see Annex A to the IRAS e-Tax Guide "GST: Taxing imported services by way of reverse charge" (1st Ed), published on 4 February 2019.

For services that fall within or outside the scope of RC, see Annex B (Tables 1–3) to the IRAS e-Tax Guide.

For a checklist for applying RC on transactions straddling 1 January 2020, see Annex D to the IRAS e-Tax Guide.

For a step-by-step guide for transactions straddling 1 January 2020, see Annex E to the IRAS e-Tax Guide.

¶21-255 Overseas vendor registration (OVR) regime

Contrary to the RC mechanism which applies to B2B supplies of imported services, the taxation of **B2C supplies** of imported services will take effect through an OVR regime. This requires:

- **overseas suppliers** (also referred to as **overseas vendors**), and
- **electronic marketplace (EM)** operators which make significant supplies of digital services to local consumers

to register with the IRAS for GST.

Overseas vendors required to register for GST

GST registration will apply only to overseas vendors:

- whose annual global turnover exceeds $1m, and
- whose sale of digital services to consumers in Singapore exceeds $100,000.

The overseas vendor (ie an overseas supplier) is a person that does not have a business establishment, fixed establishment or usual place of residence in Singapore. It therefore belongs outside Singapore in relation to the supply of the service.

Under certain circumstances, operators of EMs may be regarded as the supplier of the services made by the suppliers through the marketplaces.

Supplies on which GST must be charged by overseas vendors

As GST on supplies by duly registered overseas vendors only applies to B2C supplies of digital services, overseas vendors must ascertain whether the customer is GST-registered. Supplies to GST-registered businesses are not to be treated as B2C supplies. So, unless the customer provides his GST registration number, the overseas vendors must charge and account for GST on the supplies made.

Digital services are services which are delivered over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology.

adhere to the initial proposed approach, which is to require the overseas GST-registered supplier to obtain two pieces of non-conflicting evidence based on three proxy categories, namely:

- payment (eg whether the credit card used for payment is issued in Singapore)
- residence (eg whether the billing address is in Singapore), and
- access (eg whether the Internet Protocol (IP) address is in Singapore) (see s 15(7); and Pt IVA of the GST (General) Regulations 2018 "Place where recipient of Seventh Schedule supply belongs".

The MOF considered that the initial proposed approach provides more clarity and guidance and is consistent with the practice in other jurisdictions with OVR regimes. The MOF, however, indicated that businesses that are unable to adopt the proposed approach because of exceptional business circumstances may seek the IRAS' approval to adopt alternative methods.

- Other feedback suggested to allow businesses that are subject to the RC mechanism to determine whether a supplier is an overseas supplier based on whether the supplier is GST-registered in Singapore, rather than based on the existing rules concerning the belonging status of the supplier (see also ¶21-220). The MOF declined to accept this feedback because the supplier's GST registration status may not accurately reflect whether services are imported from overseas and thus subject to RC. For example, a supplier may be GST-registered in Singapore by virtue of the OVR regime even though he belongs overseas. Such a case ought to be subject to RC but would have been excluded if the feedback were adopted.
- Finally, the MOF accepted feedback that more information be given on:
  - the transitional tax rules for supplies that straddle the implementation date for GST on imported services (ie 1 January 2020), and
  - the scope of services subject to RC and OVR.

The IRAS has published the relevant details in its e-Tax Guide "GST: Taxing imported services by way of an overseas vendor registration regime" on 4 February 2019.

¶21-260 GST on e-commerce transactions

The electronic media (eg the internet) has become an important avenue for conducting business transactions. Electronic commerce (e-commerce) transactions may involve the supply of:

- physical goods
- digitised goods, and
- services.

In essence, the basic principles for charging GST also apply to e-commerce transactions. A GST-registered person making a taxable supply must charge GST irrespective of the medium through which the transaction occurs.

Example 7

A GST-registered person selling goods in Singapore via the internet (instead of the traditional mode) must charge and collect GST on the sales made. The output GST is chargeable even if the sale was made through a third-party e-commerce service provider.

The IRAS has clarified the GST treatment for e-commerce transactions. Some aspects of the GST treatment are given below:

- An e-commerce service provider, like any other business entity, is liable to collect GST if it is a GST-registered person making a taxable supply.
- A sale of digitised goods (eg music and software) is treated as a supply of services for GST purposes.
- The "import" of digitised goods (ie when downloading music or software materials over the internet) is not subject to GST where the transaction takes place before 1 January 2020. (Note: For transactions that take place from 1 January 2020, see ¶21-250 under the section on "*RC mechanism*".)
- The sale of digitised goods over the internet by a GST-registered person to an individual consumer or a business entity is liable to GST charge unless the customer does not belong in Singapore.

(See IRAS e-Tax Guide "GST Guide for E-Commerce" (4th Ed), published on 13 February 2018.)

A GST-registered trader who sells books over the internet is therefore required to charge 7% GST on the price of the books if they are delivered to a local destination; the supply of the books (being a supply of goods) will however be zero-rated if they are exported to another country.

On the other hand, a GST-registered trader who makes a supply of services is required to charge 7% GST unless the supply is zero-rated; an example of a zero-rated supply is services performed for a person who does not belong in Singapore at the time the service is performed and the services are not supplied directly in connection with land or goods situated in Singapore (see ¶21-510).

Table 3 reproduces the Appendix of the above IRAS e-Tax Guide (for ascertaining whether a customer or business entity "belongs in Singapore" in relation to a supply of services).

Table 3: GST Treatment of Sales of Services/Digitised Goods Supplied Over the Internet

Situation	*GST Treatment*
Customer's domain name ends with dot sg (eg amylim@pacific.net.sg).	Standard-rate. Customer treated as belonging in Singapore and service is consumed in Singapore.
Customer's domain name does not end with dot sg (eg johnlee@aol.com) and customer declares that his usual place of residence is outside Singapore.	Zero-rate. Customer treated as belonging in a country outside Singapore and the service is provided to a non-resident.
Customer's domain name does not end with dot sg (eg phillip_tan@hp.com) and customer declares that his usual place of residence is in Singapore.	Standard-rate. Customer treated as belonging in Singapore based on his declaration and service is consumed in Singapore.
Customer's domain name does not end with dot sg and customer does not declare his usual place of residence.	Standard-rate. Customer treated as belonging in Singapore.

Provision of web-hosting services

Web-hosting is the business of housing, serving and maintaining files for one or more websites. A GST-registered person supplying web-hosting services is:

- to standard-rate his supply if it is provided to a person belonging in Singapore, and
- to zero-rate his supply if it is provided to a person belonging outside Singapore.

Web-hosting services such as simple hosting, shared hosting, virtual hosting and dedicated server hosting are considered to be services not supplied directly in connection with land or goods situated inside Singapore. The supply of such services is zero-rated under s 21(3)(j) if the services:

- are made under a contract with a person who belongs in a country outside Singapore, and
- directly benefit a person who belongs in a country other than Singapore and who is outside Singapore at the time the services are performed.

For server co-location and managed services based on co-location arrangements, the servers brought in by the clients are treated as "goods in Singapore". Co-location hosting services entail the provision of physical space for these servers and other services in connection with the servers such as air-conditioning. The supply of such services is zero-rated under s 21(3)(s) if the services:

- are made under a contract with a person who belongs in a country outside Singapore, and
- directly benefit:
  - a person who belongs in a country other than Singapore, or
  - a GST-registered person who belongs in Singapore (amendment to s 21(3)(s) is underlined and reflects the RC mechanism; see ¶21-252).

(See IRAS e-Tax Guide "GST Treatment of Web-Hosting Services and Server Co-location Services", published on 30 September 2013.)

Whether certain transactions involving computer software are supply of goods or supply of services

Source: IRAS' website at www.iras.gov.sg (updated as at 21 January 2016)

Table 4 shows the IRAS' GST treatment of some transactions involving computer software. For the GST treatment of virtual currencies, see ¶21-780. See the IRAS' website at www.iras.gov.sg for other common e-commerce transactions and their GST treatment.

Table 4: IRAS' GST Treatment of Some Computer Software Transactions

	Transaction	*GST treatment*
1.	Sale of physical goods via the internet (eg online sale of books, compact discs (CDs) and clothes):	
	• Delivered in the form of a physical product	Supply of goods
	Sale of digitised goods via the internet (eg online sale of music and digital books):	
	• Delivered electronically, eg downloaded by customer via the internet	Supply of services
2.	Sale of standard (off-the-shelf) computer software:	
	• Delivered in the form of a physical product/storage media (eg CD)	Supply of goods
	• Delivered electronically, eg downloaded by customer via the internet	Supply of services
2(a)	Sale of additional licence for standard (off-the-shelf) computer software:	
	• Delivered in the form of a physical product/storage media (eg CD)	If the original computer software is a supply of goods, the sale of additional licence is a supply of goods
	• Delivered electronically, eg downloaded by customer via the internet	If the original computer software is a supply of services, the sale of additional licence is a supply of services
2(b)	Sale of renewal licence for standard (off-the-shelf) computer software	Same GST treatment as (2) above
2(c)	Sale of updates for standard (off-the-shelf) computer software	Same GST treatment as (2) above
3.	Sale of customised computer software:	
	• Delivered in the form of a physical product/storage media (eg CD)	Supply of services
	• Delivered electronically, eg downloaded by customer via the internet	Supply of services
3(a)	Sale of additional licence for customised computer software:	Supply of services
	• Delivered electronically, eg downloaded by customer via the internet	Supply of services