- 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 scheme for new companies (see ¶2-900).

Disruption caused by COVID-19 events to companies

When COVID-19 events were evolving rapidly in 2020, individuals could not travel to Singapore or could not leave Singapore due to travel restrictions. It may not be possible for a company's board meeting to be held in Singapore.

The Comptroller was prepared to consider the company as a Singapore tax resident for YA 2021 and/or YA 2022 if all the following conditions were met:

- the company is a Singapore tax resident for the immediately preceding YA
- there are no other changes to the economic circumstances of the company. These include principal activities and business model, nature of business operations and the conduct of the business in Singapore and elsewhere and the usual locations in which the company operates, and
- the directors of the company have to attend the board of directors' meeting held outside Singapore or if the meeting is held via electronic means (eg via video conferencing, teleconferencing, etc) due to the directors being temporarily restricted in their travel as a consequence of COVID-19.

Conversely, the Comptroller would consider a company as a non-resident for YA 2021 and/or YA 2022 if all the following conditions were met:

- the company is not a Singapore tax resident for the immediately preceding YA
- there are no other changes to the economic circumstances of the company. These include principal activities and business model, nature of business operations and the conduct of the business in Singapore and elsewhere and the usual locations in which the company operates, and
- the company has to hold its board of directors' meeting in Singapore due to the travel restrictions relating to COVID-19.

To support the claim that the company should continue to be treated as a tax resident or non-resident of Singapore, the company should keep relevant documentations and records (eg board minutes stating why the directors were attending board meetings from their respective locations) and to provide the relevant information to the Comptroller upon request.

The above treatment to consider whether a company will be considered as a Singapore tax resident or non-resident was applicable until YA 2022 and will not be further extended.

Key legislation: *Income Tax Act 1947 (2020 Revised Edition)*, ss 2(1) ("resident in Singapore"), 13(8).

Cases: *De Beers Consolidated Mines Ltd v Howe* (1906) 5 TC 198; *NB v CIT* (2006) MSTC 5,571.

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¶2-650 Inward redomiciliation regime for companies in Singapore

Pt 10A of the *Companies Act 1967 (2020 Revised Edition)* (Transfer of Registration) contains the inward redomiciliation regime for companies in Singapore. The regime took 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 1967 (2020 Revised Edition)*. 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 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 1967 (2020 Revised Edition)* 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 2 of the following criteria in the 2 financial years immediately preceding its application:
  - its total assets exceed $10 million in value
  - its annual revenue exceeds $10 million, and
  - it has more than 50 employees

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Corporate tax rebate — YA 2023

There is no corporate tax rebate for YA 2023.

For information, the corporate tax rebates from YA 2013 are tabulated below.

YA	*Tax rebate*	*Capped at*
2022	Not granted	-
2021	Not granted	-
2020	25%	$15,000
2019	20%	$10,000
2018	40%	$15,000
2017	50%	$25,000
2016	50%	$20,000
2015	30%	$30,000
2014	30%	$30,000
2013	30%	$30,000

Corporate tax rate

Singapore's corporate tax rate has been falling over the years (see below).

YA	*Tax rate*
From 2010 onwards	17%
2008 to 2009	18%
2005 to 2007	20%
2003 to 2004	22%
2002	24.5%
2001	25.5%
1997 to 2000	26%
1994 to 1996	27%
1993	30%
1991 to 1992	31%
1990	32%
1987 to 1989	33%
Up to 1986	40%

Non-resident companies

From YA 2010, non-resident companies are also subject to tax at 17% and may qualify for the partial tax exemption as well (conditions apply). The tax rate may be reduced for certain incomes (see ¶13-100ff).

Trustees and executors

From YA 2010, trustees (other than a trustee for an incapacitated person) and executors of estates are subject to tax at 17%.

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Clubs and associations

From YA 2010, bodies of persons (such as clubs and associations) qualify for the partial tax exemption scheme (see ¶2-850) and are subject to tax at 17%.

Key legislation: *Income Tax Act 1947 (2020 Revised Edition)*, ss 13(6), 40B, 42, Second Schedule, Part A; *Income Tax (Amendment) Act 2022 (No 33 of 2022)*, s 42.

¶2-800 Business entities

Businesses in Singapore can be carried out in one of the following forms:

- sole proprietorship
- partnership
- limited liability partnership (LLP)
- limited partnership (LP)
- company
- branch
- registered business trust (RBT), and
- variable capital company (VCC).

Sole proprietorships and partnerships

Sole proprietorships and partnerships (not including LLPs) are not legal entities and are not separate tax entities for income tax purposes. The sole proprietors and individual partners will be taxed in their own personal capacity on the profits derived from such businesses. In a partnership where the partners are companies, the partnership income will be allocated to and taxed in the hands of the corporate partners.

Limited liability partnerships

An LLP is a body corporate (a separate legal entity) but is basically treated as a general partnership for income tax purposes. This means that the partners of an LLP will be taxed on their shares of the income from the LLP (see ¶11-420).

Limited partnerships

An LP is an unincorporated body of persons. It is similar to a general partnership except that it consists of both limited and general partners. The income tax treatment of LPs is set out in ¶11-451.

Registered business trusts

The economic purpose, structure and operation of an RBT are similar to those of a company. For these reasons, the income tax treatment for an RBT is similar to that for a company (see ¶16-300 to ¶16-340).

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- a broker
- a general commission agent, or
- other agent

who is an authorised person carrying on the regular agency of the non-resident person will be assessed on their income from sales or transactions carried out through such broker or agent in the name of the broker or agent (s 53(4)). A person resident in Singapore may be deemed to be an agent of the non-resident if:

- in the course of business between the resident person and the non-resident person, and
- owing to:
  - the close connection between them, and
  - the substantial control exercised by the non-resident person over the resident person,

either no profits or less than the ordinary profits from that business accrue to the resident person (s 53(2A)).

Representative office

Where the activities of a foreign company in Singapore are confined mainly to auxiliary or support services, the foreign company can register a representative office (RO) with Enterprise Singapore.

> **Note:**
>
> On 1 April 2018, International Enterprise Singapore (formerly Trade and Development Board or TDB) merged with the Standards, Productivity and Innovation Board (SPRING Singapore) to form Enterprise Singapore, a new statutory board. SPRING Singapore was responsible for helping start-ups and small and medium-sized enterprises (SMEs) in financing, capability and management development, technology and innovation. It was the national body for standards and accreditation, responsible for helping companies achieve international standards and conformity requirements. On the other hand, IE Singapore promoted international trade and helped Singapore companies expand internationally. Enterprise Singapore integrates the functions of these 2 former statutory boards.

The RO is not permitted to:

- carry on any trade or business in Singapore
- sign any contracts, or
- open any letters of credit

directly or indirectly on behalf of its head office. An RO is not recognised as a legal entity under the Singapore *Companies Act 1967 (2020 Revised Edition)*.

The RO is essentially a cost centre and not a profit centre. Where the RO's activities are confined to services (eg liaison services and dissemination of market information) rendered to the head office, related and/or associated

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companies in the Asia-Pacific region, the RO is normally not regarded as having derived taxable income in Singapore. However, the IRAS may impose tax based on a notional profit of 5% of the expenditure incurred by the RO in Singapore if the IRAS regards the activities rendered by the RO to its head office as sufficient to render a taxable presence in Singapore. The existence of a tax treaty may, however, exclude such taxation.

Disruption caused by COVID-19 events — permanent establishment issues arising from employees of foreign companies working in Singapore

With the employees of the foreign entities remaining in Singapore due to travel restrictions relating to COVID-19 and performing work remotely in Singapore for an extended period for the benefit of their overseas employers, permanent establishment issues may be triggered in Singapore depending on the nature of their work performed.

The Comptroller will consider that such presence does not result in the creation of a permanent establishment in Singapore for the foreign company for YA 2021, YA 2022 and/or YA 2023 if all the following qualifying conditions are met:

- The foreign company does not have a permanent establishment in Singapore for the immediately preceding YA.
- There are no other changes to the economic circumstances of the company. These include principal activities and business model, nature of business operations and the conduct of the business in Singapore and elsewhere and the usual locations in which the company operates.
- The presence of the employees in Singapore is due to travel restrictions relating to COVID-19 and their physical presence in Singapore up to 30 June 2021 is temporary. The date of 30 June 2021 was subsequently reviewed and extended to 31 March 2022.
- The activities performed by the employees during the presence would not have been performed in Singapore if not for the travel restrictions relating to COVID-19.
- These employees will leave Singapore as soon as they are able to do so, following the relaxation of travel restrictions relating to COVID-19.

To support the claim that there is no permanent establishment in Singapore, the company should keep relevant documentations and records and to provide the relevant information to the Comptroller upon request.

The above treatment not to consider the presence of employees in Singapore to constitute permanent establishments of foreign entities in Singapore is applicable to 31 March 2022 and will not be further extended.

Key legislation: *Income Tax Act 1947 (2020 Revised Edition)*, ss 2(1) ("permanent establishment"), 12(6), 12(6A), 12(7), 12(7A), 43(3), 43(3A), 50A(1), 53(2A), 53(4); *Variable Capital Companies Act 2018 (2020 Revised Edition)*.

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¶2-850 Partial tax exemption scheme for all companies

The partial tax exemption scheme was implemented to help small and medium companies remain competitive.

YA 2008 to YA 2019

A tax exemption applies to the following income that is subject to the normal corporate tax rate (17% from YA 2010) (s 43(6) of the *Income Tax Act 1947 (2020 Revised Edition)*):

- 75% of the first $10,000 chargeable income (ie up to $7,500 exempt), and
- 50% of the next $290,000 chargeable income (ie up to $145,000 exempt).

The maximum amount of exempt income (from YA 2008 up to YA 2019) was therefore $152,500. The partial tax exemption scheme was adjusted in the 2018 Budget — see the section on "*With effect from YA 2020*" below. The remaining income is then subject to the normal corporate tax rate. The effect of this scheme is that the effective corporate tax rate would be lower than the normal corporate tax rate.

The partial tax exemption does not apply to the following income:

- chargeable income that is subject to tax at a concessionary rate, and
- income earned by a non-resident company that is subject to a final withholding tax rate of 15% or 10%.

With effect from YA 2020

From YA 2020, the partial tax exemption scheme is adjusted as follows for all companies (excluding those that qualify for the Start-Up Tax Exemption (SUTE) scheme (see ¶2-900)) and bodies of persons:

- 75% exemption on the first $10,000 of normal chargeable income, and
- 50% exemption on the next $190,000 of normal chargeable income.

From YA 2020, the maximum amount of exempt income is therefore reduced to $102,500.

Example 13 illustrates. The application of the partial tax exemption scheme to a company that has incurred a trade loss, or to a company that is entitled to claim investment allowances, further deductions or deduction for approved donations is explained further at ¶9-100ff.

Example 13

Company P, incorporated in 2000, has the following income for the year ended 31 December 2021:

	$
Trade income	450,000
Rental income	50,000
	500,000

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The tax liability of Company P for YA 2022 would be:

	$	$
Trade income		450,000
Rental income		50,000
Income eligible for exemption		500,000
Less: Exempt income		
75% of 1st $10,000	(7,500)	
50% of next $190,000	(95,000)	(102,500)
Chargeable income		397,500
Tax assessed at 17%		67,575
Tax payable		67,575

Key legislation: *Income Tax Act 1947 (2020 Revised Edition)*, s 43(6).

¶2-900 Start-up tax exemption scheme for new companies

An enhanced tax exemption scheme (also known as SUTE scheme) was first announced in the 2004 Budget to enable new Singapore-incorporated companies to retain and plough more of their earnings back into their businesses.

Under the SUTE scheme (from YA 2008 up to YA 2019), a tax exemption applied to the following income that was subject to the normal corporate tax rate (17% from YA 2010) (s 43(6A) of the *Income Tax Act 1947 (2020 Revised Edition)*):

- 100% on the first $100,000 of chargeable income, and
- 50% on the next $200,000 of chargeable income.

The maximum exemption allowed was therefore $200,000. The SUTE scheme was adjusted from YA 2020 — see below.

The tax exemption applies to the first 3 qualifying consecutive YAs. The first qualifying YA is the YA that relates to the basis period in which the company is incorporated.

Conditions for start-up tax exemption

From YA 2009, a new company (other than a company limited by guarantee) will qualify for the tax exemption if the following conditions are satisfied (s 43(10)):

(a) it must be incorporated in Singapore

(b) it must be resident in Singapore for that YA, and

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Running expenses incurred by the employer from 1 April 2019 to 31 December 2019 (275 days)

	$
Petrol	2,900
Road tax (1 April 2019 to 31 March 2020* — see footnote below)	1,210
Car insurance (1 April 2019 to 31 March 2020)	2,500
Car park and EPR charges	1,500
Car maintenance and repairs	1,000
Total	9,110

Value of taxable car benefit for the period 1 April 2019 to 31 December 2019

= 3/7 x {[($25,000 + $10,500) / 5] x 275/365 + $9,110}

= 3/7 x $14,459

= $6,196

Total value of taxable car benefit from 1 January 2019 to 31 December 2019

= $1,420 + $6,196

= $7,616

*Some expenses may be paid in advance for the year, eg car insurance and road tax. To ease the compliance burden of the employer, the IRAS is prepared to accept the taxable car benefit computed based on the actual running costs incurred by the employer in the calendar year.

IRAS Example 5: Employer provides a leased car to an employee

A company provides a leased car to an employee from 1 January 2019 to 31 December 2019. The company incurs the following expenses in the year 2019:

	$
Car rental	30,000

Running expenses incurred by the employer from 1 January 2019 to 31 December 2019

	$
Petrol	5,000
Car park and ERP charges	1,500
Total	6,500

Value of taxable car benefit for the year ended 31 December 2019

= 3/7 x ($30,000 + $6,500)

= 3/7 x $36,500

= $15,642

Taxable car benefit in respect of employee-owned car expenses which are reimbursed by the employer

The IRAS has indicated that as a car owned by an employee is primarily used for personal purposes, the "3/7" rule would not be an appropriate basis to compute the taxable benefit in respect of **employee-owned car expenses**

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which are **reimbursed by the employer**. Where the employer has not provided an employee with the use of a car but arranges to reimburse fully or partially the running expenses incurred by the employee, including the amount incurred for private usage, the formula for calculating the taxable benefit from YA 2020 will remain the same as that prior to YA 2020, ie:

$$\frac{\text{Private mileage}}{\text{Total mileage}} \times \text{Car expenses reimbursed by employer}$$

Home leave passages

From YA 2018, the provision of home leave passages to an employee is taxable to them on the full cost.

Interest-free or subsidised loans to employees other than directors

Under current IRAS practice, the interest-free or interest-subsidised element of certain loans provided by an employer to a non-director employee is exempt from tax if the employee does not have:

- substantial shareholdings in, or
- control or influence over,

the company (see Item 10, Table 3 in ¶5-900).

Where:

- the employee obtains the loan themselves, and
- the employer either pays interest to the lender directly or reimburses the employee fully or partially for the interest,

the amount of the subsidy will be fully taxable on the employee.

Interest-free or subsidised loans to directors

In *NYK & Anor v CIT* (2001) MSTC 5,297, it was held that the interest-free element in interest-free loans granted to company directors constituted a perquisite under s 10(1)(b).

In that case, the 2 taxpayers were directors of a family-held company. They obtained interest-free loans from the company. The Comptroller taxed the deemed interest on these loans as employment income to them, and they objected. The Singapore Income Tax Board of Review held that the taxpayers were directors and therefore employees under s 2(1) for tax purposes, and that they have obtained a perquisite, being the saving on the interest that would have been incurred if they had obtained the loans from a bank or a finance company.

In addition, the company incurred substantial costs in granting them these loans. The deemed interest therefore constituted employment income to them. The Comptroller's method of calculating the deemed interest using the lowest prime lending rate a bank would extend to its most creditworthy customers was accepted. The High Court upheld the Board's decision.

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The IRAS's treatment has subsequently been set out in its letter of 2 July 2002 to the then-Institute of Certified Public Accountants of Singapore (ICPAS), now known as the Institute of Singapore Chartered Accountants (ISCA), and in the e-Tax Guide "Benefits to Company Directors from Interest-free/Subsidised Loans" (SRL ¶20-002).

In the letter and the e-Tax Guide (SRL ¶20-002), the IRAS took the view that interest-free or subsidised loans made to directors/shareholders in their capacity as directors constitute a taxable perquisite of an employment. Such loans, if made to them in their capacity as shareholders only, would not be taxable as employment income. Whether subsidised or interest-free loans are made to them as directors or as shareholders is a question of fact. The IRAS said that it would generally be prepared to accept that loans are given to directors/shareholders solely in their capacity as shareholders if all the following conditions are present in a loan arrangement between the company and them:

- There are *bona fide* (ie other than tax) reasons for the company to extend loans to directors/shareholders in their capacity as shareholders, instead of paying them dividends or returning excess capital to them.
- The loans are not remuneration or benefits to directors disguised as loans to shareholders, or the loans are not intended to be a means for a company to pay dividends or return excess contributed capital to its shareholders, including directors/shareholders. In other words, where a loan is made, there must be evidence of a genuine intent for a creditor/debtor relationship to exist between the company and shareholders and the company can provide evidence to support that it has reasonable expectations of the loans being repaid.
- The loans are extended to all shareholders rather than only those who are also directors, under similar loan terms and loan quantum determined on a similar basis. The loan quantum extended to each shareholder should be determined based on their respective shareholding in a company or other equivalent basis, and not due to the influence or position held by any director/shareholder in the company. The loan terms include repayment schedules and interest rate charged, if any. There should not be any arrangement made among shareholders of a company provided with loans such that loan proceeds obtained by one or more shareholders are subsequently diverted to other shareholders for the latter's use.
- Contemporaneous documentary evidence in the form of directors' or board resolutions, approvals at shareholders' meetings, minutes of meetings or other records, etc, are available to support any claim that the loans are made to the recipients in their capacity as shareholders and not as directors.

The value of the taxable interest benefit is computed based on the prime interest rate. For simplicity, the IRAS generally accepts a computation of the benefit based on the amount of loan outstanding as at 31 December of each year multiplied by the average prime lending rate for that year. If the loan was

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taken for less than one calendar year, the benefit would be computed according to the **number of months** in that year for which the loan remains outstanding.

(See IRAS e-Tax Guide "Benefits to Company Directors from Interest-free/Subsidised Loans" (SRL ¶20-002).)

The IRAS has published the average prime lending rates for the years since 2000. The rates since 2011 are as follows:

Year	*Average prime lending rate (%)*
2021	5.25
2020	5.25
2019	5.25
2018	5.33
2017	5.28
2016	5.35
2015	5.35
2014	5.35
2013	5.38
2012	5.38
2011	5.38

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Computing interest benefits

The value of interest benefits provided to employees is computed based on the prime interest rate.

For simplicity, the IRAS may accept a computation based on the amount of loan outstanding as at 31 December of each year multiplied by the average prime lending rate for that year.

If the loan was taken for less than one calendar year, the interest benefits would be computed according to the number of months in that year for which the loan remained outstanding.

Source: IRAS website at iras.gov.sg.

Key legislation: *Income Tax Act 1947 (2020 Revised Edition)*, ss 2(1) ("employee"), 10(1)(b).

IRAS Practice: IRAS e-Tax Guide "Benefits to Company Directors from Interest-free/Subsidised Loans" (SRL ¶20-002); IRAS e-Tax Guide "Change in Basis for Computing Taxable Car Benefit" (SRL ¶30-141).

Case: *NYK & Anor v CIT* (2001) MSTC 5,297.

¶5-260 Employee equity-based remuneration schemes

During the course of employment, an employee of a company may be granted a right to acquire shares in the company or its parent company under the Employee Stock Option Scheme (ESOS) or other forms of Employee Share Ownership (ESOW) plans. The ESOW plans allow employees to own or purchase shares in the company or that of its parent company and such plans include share awards and other similar forms of employee share purchase plans.

The rules for taxing the right or benefit to acquire shares (under ESOS and ESOW plans) granted on or after 1 January 2003 are explained under the *General* section below.

There is preferential tax treatment (ie tax deferral or tax exemption) for gains or profits derived by an employee under certain ESOS and ESOW plans (see ¶5-261).

General

Right or benefit to acquire shares that is granted on or after 1 January 2003

Section 10(1)(b) income

A right or benefit granted to a person on or after 1 January 2003 to acquire shares in any company under an ESOS and other forms of ESOW plans whether in their name or in the name of their nominee or agent, is deemed to be s 10(1)(b) income if it is obtained by them by reason of any office or employment (s 10(6)).

Source of income

For an individual who is granted share options in respect of an employment exercised in Singapore, the full amount of the gains, irrespective of where the stock options are exercised, would be employment income derived from Singapore.

Conversely, for an individual who is granted stock options in respect of employment exercised overseas, any gains derived by them from the exercise of these stock options, even if the options are exercised in Singapore, are not regarded as income derived from Singapore.

For an individual who is granted shares under an ESOW plan (with vesting imposed) on or after 1 January 2003 in respect of an employment exercised in Singapore, they will be taxed in Singapore on the full gains derived from these shares whether they are in or outside Singapore on the date of vesting. The tax treatment of these gains may differ if any of the incentive schemes applies (see ¶5-261).

Conversely, for an individual who is granted shares under an ESOW plan (with vesting imposed) on or after 1 January 2003 in respect of an employment exercised outside Singapore, the gains are not regarded as being derived from

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Singapore and are therefore not taxable. This treatment will apply even if they are physically present in Singapore or exercising an employment in Singapore on the date of vesting of such shares. (Note that the related costs incurred by the employer are prohibited under s 15(1)(p) — see ¶7-100ff.)

(See IRAS e-Tax Guide "Tax Treatment of Employee Stock Options and Other Forms of Employee Share Ownership Plans" (SRL ¶12-008). This e-Tax Guide consolidates the following 6 e-Tax Guides previously issued on employee share option (ESOP) gains and other forms of ESOW plans:

- "Gains or Profits from Share Option", published on 30 June 1997
- "Valuation of Gains or Profits from Option to Purchase Shares in a Company Listed on the Singapore Exchange", published on 30 May 1998
- "Qualified Employee Stock Option Scheme", published on 31 March 2000
- "Relief for Double Taxable of Gains from Employee Share Options", published on 31 March 2000
- "Changes to Tax Treatment of Employee Stock Options and Other Forms of Employee Share Ownership Plans", published on 31 August 2002, and
- "Tax Treatment of Employee Stock Option and Other Forms of Employee Share Ownership Plans — Alternative to the Deemed Exercise Rule", published on 19 August 2004.)

Accrual of income and taxable amount

Under s 10(6) of the Act, the date of accrual of the gains or profits and the taxable amount are determined as follows.

(a) Where the right or benefit is exercised, assigned, released or acquired — the date of accrual of the gains is at the time of the exercise, assignment, release or acquisition of the right or benefit; the taxable amount is the open market price of the shares at that time, less any amount paid for the shares.

(b) Notwithstanding (a), where the right or benefit granted is subject to any restriction on the sale of the shares so acquired — the date of accrual of the gains is at the time the restriction ceases to apply; the taxable amount is the open market price of the shares at that time, less any amount paid for the shares.

(c) If it is not possible to determine the taxable amount under (a) or (b), the Comptroller may calculate the taxable amount using the net asset value of the shares less any amount paid for the shares.

(d) (Up to YA 2009 inclusive) notwithstanding (a) and (c), the taxable amount of income derived from any exercise of a right or benefit to acquire shares in any company listed on the Singapore Exchange (SGX) is the last done price on the listing date of the shares so acquired less the amount paid for the shares.

Under the SGX rules, when an option to acquire shares in an SGX-listed company is being exercised, new shares in the company will have to be issued to the employee who exercised the option. The new shares cannot be traded

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(ii) The employees would not receive any shares, cash or any oth benefits upon the conversion of the RSU awards.

(iii) The employees would not receive any payments or benefits provide as consideration for conversion of the RSU awards.

Advance Ruling Summary No 01/2021 Published on 21 May 2021
Leveraged Share Plan gains to an employee is income subject to tax under 10(1)(b) pursuant to s 10(6). The taxable amount is the actual Leverage Amount (a return calculated according to a certain formula) received upon th expiry of the lock-up period or upon early exit, less the employee's Persona Contribution.

Reasoned: Section 10(6) covers gains from stock options and share awar plans which allow an eligible employee of the company to own or acquir shares in a company. As the employees of the company were offered rights t subscribe to new shares during their employment in Singapore, the gain derived from rights to buy shares will fall within the s 10(6).

As the Leveraged Amount represented the market value of the number o shares or units which the employee was entitled to redeem upon the expiry o the lock-up period or upon an early exit event, the taxable gains (if any) woul be the Leveraged Amount less his Personal Contribution.

The arrangements under the Leveraged Plan where the employee only paid a percentage of the subscription price of the shares while the bank paid th balance, was a matter of financing the purchase of shares (unless the sto price fell sufficiently, the bank was to be repaid in shares at the end of th lock-up period), and did not impact the tax treatment of the gains derived from the rights to acquire the shares.

Where an employee who is awarded shares with selling restrictions sets up a trust to transfer the shares, which will be owned beneficially by themselves o their family members, the IRAS has taken the view that, based on a plain reading of s 10(6), as the transfer of the shares represents an assignment of th right or benefits and as the trust is a separate entity, the gains or profits derived would be income chargeable to tax at the time of the assignment. This is notwithstanding that the employee (or their beneficiaries) will not enjoy any immediate benefit at the time of the assignment as the shares are still subject to the selling restrictions. For actual cases, the taxpayer or tax agent may write to the IRAS and provide the full facts for the IRAS's review.

"Deemed exercise" rule

A "deemed exercise" rule applies to an individual who has been granted, on or after 1 January 2003, a right or benefit to acquire shares in a company while they are exercising an employment in Singapore if, immediately before they cease that employment:

- the individual is neither a Singapore citizen nor permanent resident, or being a Singapore permanent resident, is leaving Singapore permanently or is posted to work overseas, and

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- the right or benefit is not exercised, assigned, released or acquired by them, or the restriction on the sale of the shares has not ceased to apply.

The amount of gains or profits from the right or benefit is:

- deemed to be income derived by the individual one month before:
  - the date of cessation of employment, or
  - the date the right or benefit is granted,

  whichever is the later, and
- computed based on the open market price of the shares on that date, less the amount paid for the shares (the Comptroller may substitute the net asset value for the OMV in certain cases) (s 10(7)).

Essentially, under this "deemed exercise" basis, the individual is subject to tax on the gains or profits from:

- any unexercised or restricted employee stock options, and
- any unvested or restricted shares under any other form of ESOW plan granted on or after 1 January 2003 while they are exercising employment in Singapore.

In this respect:

- Shares are said to "vest" in an employee when the beneficial interest to those shares passes to the employee. Vesting occurs when the employee assumes the position of a shareholder, eg when they acquire the right to vote and the right to receive dividends.
- A stock option that is "unexercised" may be vested (ie the right to exercise the stock option has arisen to the employee) or unvested.
- A stock option is "restricted" if a moratorium has not been lifted, eg the right to sell the shares has not accrued to the employee.

Employer undertaking for non-applicability of "deemed exercise" rule

The "deemed exercise" rule will, however, not apply (ie s 10(6) will apply) to the individual if the employer has given an undertaking acceptable to the Comptroller (s 10(7A), 10(7B) and 10(7C)).

For the undertaking to be considered by the IRAS, the employer has to adopt an alternative methodology such as the tracking option, and satisfy the following criteria:

- The employer must be a Singapore-incorporated company or a branch of a foreign-incorporated company registered in Singapore and carrying on business activities in Singapore.

  Where the right or benefit to acquire the shares is not granted by the employer in Singapore but by its parent company that is operating a group plan, the employer must:
  - be a Singapore incorporated company, and
  - not separately operate its own plan at the time of the grant by the parent company.

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- The employer's human resource and computer systems are able to track the plans.
- The company that employs such an individual has met adequate capital requirements.
- The employer must not have:
  - any record of late filing of tax returns or late payment of taxes, or
  - committed any income tax offence for the 3 years immediately before the date of application.

This option essentially allows a company to track when the income realisation event of the foreign employee occurs. When such an event occurs, the employer will calculate and report the gains to the Comptroller and also undertake to collect and pay the tax on such gains.

(See IRAS e-Tax Guide "Tax Treatment of Employee Stock Options and Other Forms of Employee Share Ownership Plans" (SRL ¶12-008).)

Key legislation: *Income Tax Act 1947 (2020 Revised Edition)*, ss 10(1)(b), 10(6), 10(7), 10(7A), 10(7B), 10(7C), 15(1)(p).

IRAS Practice: IRAS e-Tax Guide "Tax Treatment of Employee Stock Options and Other Forms of Employee Share Ownership Plans" (SRL ¶12-008).

Case: *CIT v HY* (2007) MSTC 7,624.

¶5-261 Tax deferral or exemption under employee equity-based remuneration schemes

Tax deferral or tax exemption applies to the gains derived from the following employee equity-based remuneration (EEBR) schemes:

- Tax deferral
  - Qualified EEBR Scheme (originally called "Qualified Employee Stock Option Scheme" when it was introduced in 1999).
- Tax exemption

  The various EEBR schemes have been consolidated under an umbrella incentive scheme, namely the Equity Remuneration Incentive Scheme (ERIS) with the following 3 different tiers of incentives:

  - Equity Remuneration Incentive Scheme (SMEs) (ERIS (SMEs))

    (originally called "Entrepreneurial Employee Stock Option Scheme" when it was introduced in 2000, renamed "Entrepreneurial EEBR Scheme" in 2002, and renamed "ERIS (SMEs)" on 16 February 2008).

    There is no change to the qualifying conditions.

    The ERIS (SMEs) was not renewed upon its expiry on 31 December 2013. However, employees who were granted stock options or shares before the date of expiry of the scheme will continue to enjoy partial tax exemption on the gains from these stock options or shares if the gains are derived on or before 31 December 2023 (s 13H(9A)).

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  - Equity Remuneration Incentive Scheme (All Corporations) (ERIS (All Corporations))

    (originally called "Company Stock Option Scheme" when it was introduced in 2001, renamed "Company EEBR Scheme" in 2002, and renamed ERIS (All Corporations) on 16 February 2008).

    Under the ERIS, companies only need to issue stock options or share awards to at least 25% of their employees from 16 February 2008 (instead of at least 50% before 16 February 2008).

    The ERIS (All Corporations) was not renewed upon its expiry on 31 December 2013. However, employees who were granted stock options or shares before the date of expiry will continue to enjoy partial tax exemption on the gains from these stock options or shares if the gains are derived on or before 31 December 2023 (s 13I(3A)).

  - Equity Remuneration Incentive Scheme (Start-ups) (ERIS (Start-ups))

    The ERIS (Start-ups) came into effect from YA 2009 for stock options or share awards granted on or after 16 February 2008 by qualifying companies.

    The ERIS (Start-ups) was not renewed upon its expiry on 15 February 2013. However, employees who were granted stock options or shares before the date of expiry will continue to enjoy partial tax exemption on the gains from these stock options or shares if the gains are derived on or before 31 December 2023 (s 13J(5A)).

Qualifying conditions

The conditions for ESOW plans to qualify under these EEBR schemes are:

- All the criteria for eligibility under the respective forerunner schemes, ie:
  - the Qualified Employee Stock Option Scheme (ESOS)
  - the Entrepreneurial Employee Stock Option Scheme (EESOS), and
  - the Company Stock Option Scheme (CSOS)

  must be satisfied.
- The minimum holding period requirement for such shares achieves a similar effect as the vesting period requirement in the forerunner stock option plans. This means that:
  - where the price payable by an employee to acquire a share is equivalent to or exceeds the market value of the share at the time of grant of the share under the ESOW plan

    a moratorium of at least half a year must be imposed (ie the share so acquired cannot be disposed of by that employee within half a year from the date of grant), and
  - where the price payable by an employee to acquire a share is at a discount to the market value of the share at the time of grant of the share under the ESOW plan

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Cash payouts — option to convert deduction into cash

Under the productivity and innovation credit (PIC) scheme, a person could convert qualifying deductions of IPRCs into cash (s 37G(1)). More details on the cash payout scheme can be found in ¶7-750.

Sale, transfer or assignment of IP rights

There were claw-back provisions where the person sold, transferred or assigned all or any part of the qualifying IP rights or the application for the registration or grant of the qualifying IP rights for which such costs were incurred, within a period of one year from the date of filing the application.

Where the IP right was disposed of within one year and the 300% deduction had been claimed for the qualifying IPRCs, the full 300% deduction allowed would be deemed as income of the person for the YA relating to the basis period in which the sale, transfer or assignment occurred (s 14A(5A)). Where the 300% deduction had been converted into cash under the cash payout scheme, the person was required to inform the IRAS within 30 days of the occurrence of such an event as the cash payout would be recoverable by the IRAS (s 37G(10)). Penalties might be imposed if the notification requirement was not complied with.

Regardless of when the IP right was disposed of and whether special deduction had been claimed, the lower of the sale price of the IP right or the special deduction previously granted would be deemed as income in the year of disposal (s 14A(4)). Where the special deduction had been converted to a cash payout, the IRAS would recover the amount of payout from the person concerned only if the IP right was disposed of within one year (s 37G(10)). There was no recovery of the cash payout where the disposal was made after one year. The following table summarises the above tax position:

Table 2: Deductions relating to IP rights

Qualifying deductions	*Deductions claimed for qualifying IPRCs*		*Qualifying deductions converted into cash*	
	IP right disposed of within 1 year	*IP right disposed of after 1 year*	*IP right disposed of within 1 year*	*IP right disposed of after 1 year*
300% deduction	Deemed as income chargeable to tax in the year of disposal	No claw-back of 300% deduction	Recovery of cash payout	No recovery of cash payout
Special provision	Lower of sale price of the IP right or special deduction granted previously is deemed as income in the year of disposal		Recovery of cash payout	No recovery of cash payout

From YA 2011 to YA 2018, where a partnership carrying on a trade or business had incurred qualifying IPRCs during the basis period for the relevant YAs, the aggregate of the deductions allowed to all the partners of the partnership for those costs in respect of all the trades and businesses of the partnership could not exceed 300% of the lower of:

- the IPRCs
- $400,000 (under the PIC scheme), or
- $600,000 (under the PIC+ scheme).

Similarly, from YA 2011 to YA 2018, where an individual carrying on a trade or business through 2 or more firms (excluding partnerships) had incurred qualifying IPRCs during the basis period for any relevant YA in respect of such firms for the purposes of the individual's trade or business, the amount of 300% deduction allowed to the individual for those costs in respect of all their trades and businesses could not exceed 300% of the lower of:

- the IPRCs
- $400,000 (under the PIC scheme), or
- $600,000 (under the PIC+ scheme).

From YA 2019 to YA 2025, a person carrying on a trade or business is allowed to claim a further tax deduction on up to $100,000 of qualifying IPRCs incurred for each qualifying YA.

This means that from YA 2019 to YA 2025, a person can claim:

- a 100% deduction on the qualifying IPRCs incurred, and
- a further deduction for qualifying IPRCs incurred up to $100,000.

As announced in the 2023 Budget, in line with the enhancements under the EIS, the sunset date for the s 14A incentive will be extended till YA 2028.

Claimant's undertaking

Note that the person is required to give an undertaking that they would be:

- the proprietor of the patent or registered trademark
- the registered owner of the registered design, or
- the grantee of the plant variety,

as the case may be, when the patent is granted, the trademark or design is registered or the plant variety is granted protection (s 14A(2)).

Definitions

A qualifying IP right has been defined to mean the right to do or authorise the doing of anything which would, but for that right, be an infringement of any patent, registered trademark or design, or grant of protection of a plant variety (s 14A(6)).

Qualifying IPRCs are fees paid to:

- the Registry of Patents, Registry of Trade Marks, Registry of Designs or Registry of Plant Varieties in Singapore or an equivalent registry outside Singapore for the:
  - filing of an application for a patent, registration of a trademark or design, or grant of protection of a plant variety
  - search and examination report on the application for a patent

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

The amount of deductions claimable under s 14W for the relevant YAs was as follows:

	A	B	C
	$	$	$
YA 2016			
Normal deduction	300,000	550,000	850,000
Enhanced deduction of 300%			
300% × $300,000	900,000		
300% × $550,000		1,650,000	
300% × $850,000			2,550,000
Total deductions	1,200,000	2,200,000	3,400,000
YA 2017			
Normal deduction	650,000	400,000	100,000
Enhanced deduction of 300%			
300% × $650,000	1,950,000		
300% × $400,000		1,200,000	
300% × $100,000			300,000
Total deductions	2,600,000	1,600,000	400,000
YA 2018			
Normal deduction	1,000,000	1,000,000	1,000,000
Enhanced deduction of 300%			
300% × $(1,200,000 – 300,000 – 650,000)	750,000		
300% × $(1,200,000 – 550,000 – 400,000)		750,000	
300% × $(1,200,000 – 850,000 – 100,000)			750,000
Total deductions	1,750,000	1,750,000	1,750,000
Total deductions for all 3 years	5,550,000	5,550,000	5,550,000

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Cash payouts — option to convert deduction into cash

Under the PIC scheme, a person could convert deductions of qualifying IP in-licensing costs into cash (s 37G(1)). More details on the cash payout scheme can be found in ¶7-750.

From YA 2011 to YA 2018, where a partnership carrying on a trade or business had incurred qualifying IP in-licensing costs during the basis period for the relevant YAs, the aggregate of the deductions allowed to all the partners of the partnership for those costs in respect of all the trades and businesses of the partnership could not exceed 300% of the lower of:

- the qualifying IP in-licensing costs
- $400,000 (under the PIC scheme), or
- $600,000 (under the PIC+ scheme).

Similarly, from YA 2011 to YA 2018, where an individual carrying on a trade or business through 2 or more firms (excluding partnerships) had incurred qualifying IP in-licensing costs during the basis period for any relevant YA in respect of such firms for the purposes of the individual's trade or business, the amount of 300% deduction allowed to the individual for those costs in respect of all their trades and businesses could not exceed 300% of the lower of:

- the qualifying IP in-licensing costs
- $400,000 (under the PIC scheme), or
- $600,000 (under the PIC+ scheme).

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YA 2019 to YA 2025

As announced in the 2018 Budget, to support businesses to buy and use new solutions, from YA 2019 to YA 2025, in addition to the deduction allowed under s 14 or s 14C (as the case may be), a further tax deduction on up to $100,000 of qualifying IP in-licensing costs for qualifying IP rights incurred will be allowed for each qualifying YA (s 14U(1)).

This means that a person can claim for each qualifying YA from YA 2019 to YA 2025:

- a 100% deduction on the qualifying IP in-licensing costs for qualifying IP rights incurred, and
- a further deduction for qualifying IP in-licensing costs for qualifying IP rights incurred up to $100,000.

YA 2024 to YA 2028

400% deduction for qualifying businesses

Under the EIS announced during the 2023 Budget, to encourage businesses to engage in innovation and capability development activities, businesses that generate less than $500 million in revenue in the relevant YA can claim an enhanced allowance or deduction of 400% for the first $400,000 (combined cap) of qualifying expenditure incurred on the acquisition and licensing of IP rights per YA from YA 2024 to YA 2028.

Sunset clause

As announced in the 2023 Budget, in line with the enhancements under the (EIS, the sunset date for the s 14U incentive will be extended till YA 2028.

Definitions

A qualifying IP right for the purposes of the IP in-licensing costs refers to an IP right as defined in s 19B(11) but excludes trademarks and any right to the use of software. An IP right is defined in s 19B(11) to mean the right to do or authorise the doing of anything which would, but for that right, be an infringement of any of the following:

- patents
- copyrights
- trademarks
- registered designs
- geographical indications
- layout designs of integrated circuits
- trade secrets
- information that has commercial value, or
- the grant of protection of a plant variety (s 14T(8)).

In the expressions "trade secret" and "information that has commercial value" and any work or subject matter to which the expression "copyright" relates in the definition of IP rights, the following are excluded:

(a) information about customers of a trade or business eg a list of customers and the requirements of those customers gathered in the course of the carrying on of that trade or business

(b) information on work processes (eg standard operating procedures) other than industrial information or technique that is likely to assist in the manufacture or processing of goods and materials, and

(c) compilation of any information as described in (a) or (b) above (s 19B(11A)).

The above list is not an exhaustive exclusion list. The Minister may, by regulations, prescribe other matters to be included in the exclusion list in relation to the definition of IP rights (s 19B(11A)).

Qualifying IP in-licensing costs refer to licence fees and exclude expenditure for the transfer of ownership of any qualifying IP right, legal fees and other costs related to the licensing of any qualifying IP right (s 14T(10)).

Conditions for s 14U deduction

Note that the qualifying IP in-licensing costs must be deductible under s 14 or s 14C before the person is entitled to claim the enhanced deduction under s 14U (an amount up to $100,000) (ss 14U(1), 14U(4)(a)). The enhanced deduction will not be granted:

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- if the qualifying IP right is licensed from a related party carrying on a trade or business in Singapore and the qualifying IP right is acquired or developed (in whole or in part) by the related party (s 14U(4)(b)), or
- if a capital allowance (CA) has been previously claimed under s 19B in respect of the qualifying IP right (s 14U(4)(c)).

Partnerships and individuals carrying on more than one trade or business

Partnerships

From YA 2019 to YA 2025, the aggregate of the deductions allowed to all the partners of the partnership for qualifying IP in-licensing costs for qualifying IP rights in respect of all the trades and businesses of the partnership cannot exceed $100,000 for that YA (s 14U(3)).

Individuals

From YA 2019 to YA 2025, the amount of deduction allowed to the individual for qualifying IP in-licensing costs for qualifying IP rights in respect of all their trades and businesses cannot exceed $100,000 for that YA (s 14U(2)).

Key legislation: *Income Tax Act 1947 (2020 Revised Edition)*, ss 14, 14C, 14T, 14U, 19B(11), 19B(11A), 37G(1).

¶7-820 Export promotion and market development expenditure

Under s 14B of the *Income Tax Act 1947 (2020 Revised Edition)*, a further deduction in addition to the deduction allowed under s 14 is allowed for expenses incurred in relation to:

- establishing, maintaining or participating in an approved trade fair, trade exhibition, trade mission or trade promotion activity (s 14B(2)(a))
- maintaining an approved overseas trade office (s 14B(2)(b)), or
- market development expenditure for the carrying out of any approved marketing project (s 14B(2)(c)).

Conditions for further deduction

To qualify for the further deduction, the taxpayer must be an approved company or firm that has incurred the expenses for the primary purpose of:

- promoting the trading of goods or the provision of services, or
- providing services in connection with the use of any right under a master franchise or master intellectual property (IP) licence where the company or firm is the holder of the franchise or licence (s 14B(1)).

The Minister may specify the maximum amount of expenses to be allowed a further deduction (s 14B(3)).

Only those expenses that qualify for deduction under s 14 will qualify for a further deduction (s 14B(4)(a)). In the case of an approved trade fair, trade exhibition, trade mission, trade promotion activity or marketing project,

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further deduction for the travelling, accommodation and subsistence expenses or allowances is available only for an approved number of employees (s 14B(4)(b)).

Government administrative body

Section 14B will be administered by Enterprise Singapore (formerly IE Singapore). Applications for further deduction for local trade fairs were previously processed by the Singapore Tourism Board (STB).

Sunset clause

No approval will be granted after 31 December 2025.

Overseas trade office expenses

The period of eligibility for further deduction is subject to approval and will run from the date of establishment of the approved overseas trade office for an approved number of years. The following expenses do not qualify for further deduction:

- expenses for establishing the overseas trade office
- remuneration, travelling, accommodation and subsistence expenses or allowances for more than the approved number of employees of the overseas trade office, and
- any expenses that are specifically excluded as a condition for approval (s 14B(4)(c)).

If the approved company or firm setting up an overseas trade office has a permanent establishment (PE) in the foreign country where the approved overseas trade office is to be established and it is found to be carrying on business in that country through the PE and is taxable there, it will be disqualified from claiming further deduction (s 14B(4)(c)(v)).

Marketing project expenses

Further deduction is available in respect of the following market development expenditure:

- approved expenses directly attributable to the carrying out of market research or obtaining of market information, including any feasibility study
- expenses for advertisements placed in approved media
- expenses incurred in approved promotion campaigns, or
- approved expenses incurred in the design of packaging or in the certification of goods or services where such certification is carried out by an approved person (s 14B(11)).

The further deduction under s 14B for eligible expenses incurred for qualifying market development activities has been merged with the further deduction for eligible expenses incurred for qualifying investment development activities under s 14H for applications submitted and approved on or after 1 April 2011 (see ¶7-840).

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Automatic double deduction of expenses

Businesses are allowed automatic double tax deduction without prior approval on up to $100,000 of qualifying expenses incurred between 1 April 2012 and 31 December 2025 (both dates inclusive) on the following qualifying activities (s 14B(2)(a)):

- overseas business development trips/missions
- overseas investment study trips/missions
- participation in overseas trade fairs, and
- participation in approved local trade fairs.

However, the maximum amount of deduction allowed under s 14B(2)(a), including expenditure for which a deduction is allowed to the taxpayer under s 14H(1A), shall not exceed:

- $100,000 for a YA before YA 2019, or
- $150,000 for YA 2019 or a subsequent YA.

Businesses can continue to apply to Enterprise Singapore (formerly IE Singapore) and the STB on qualifying expenses exceeding $150,000 or on expenses incurred on other qualifying activities.

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Scope of qualifying expenses

As announced in the 2020 Budget, to continue encouraging internationalisation, the scope of the double tax deduction for internationalisation scheme is expanded to cover the following expenses incurred on or after 1 April 2020:

- third-party consultancy costs relating to new overseas business development to identify suitable talent and build up business network, and
- the following new categories of expenses incurred for overseas business missions:
  - fees incurred on speaking spots to pitch products and/or services at overseas business and trade conferences
  - transporting materials and/or samples used during the business missions (expenses incurred for transporting materials removed from 16 November 2021), and
  - third-party consultancy costs to arrange business networking events to promote products and/or services.

As announced in the 2021 Budget, to continue supporting internationalisation efforts of businesses amidst changes in the business environment, the scope of the double tax deduction for internationalisation scheme is enhanced to cover the following specified expenses incurred to participate in virtual trade fairs approved by Enterprise Singapore:

- package fees charged by event organisers for:
  - virtual exhibition hall and booth access
  - collateral creation

- business meeting and match sessions
- pitches, product launches and speaking slots
- webinar and conference, and
- post event analytics

- third party costs for design and production of digital collaterals and promotion materials for the virtual trade fairs, and
- logistics costs incurred to send materials and samples overseas to potential clients met at the virtual trade fairs. Deduction of logistics costs are subject to the following conditions:
  - both the business claiming double tax deduction and the recipient of the materials and samples have attended the approved virtual trade fair, and
  - materials and samples are sent within 6 months from the end of the approved virtual trade fair.

The list of qualifying expenses for overseas investment study trips is expanded to include logistics costs to transport materials and samples used during the investment trips.

In addition, the scope of qualifying activities which do not require prior approval from Enterprise Singapore or STB up to the current annual expense cap of $150,000 is enhanced to cover the following 5 additional activities:

- participation in virtual trade fairs approved by Enterprise Singapore
- product/service certification (primarily to increase buyer's acceptance in overseas markets) approved by Enterprise Singapore
- overseas advertising and promotional campaigns
- design of packaging for overseas markets, and
- advertising in approved local trade publication.

The above enhancements apply to qualifying expenses incurred on or after 17 February 2021.

As announced in the 2023 Budget, to support businesses in their efforts to overcome initial challenges and build up capabilities in internationalising via e-commerce, the scope of the double tax deduction for internationalisation scheme is enhanced to include a new qualifying activity "e-commerce campaign" and cover the following e-commerce campaign start-up expenses paid to e-commerce platform or service providers:

- business advisory:
  - advisory on market promotion and execution plans (such as choice of suitable e-commerce platforms)
- account creation
  - assistance with setting up accounts on e-commerce platforms, and
  - right to sell on e-commerce platforms

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- content creation, and
  - design of e-commerce campaign publicity materials (such as e-store banners, online product images)
- product listing and placement
  - upload of content on products and services to e-commerce platforms, and
  - selection of suitable frequency and timing to display content on products and services.

Prior approval is required from Enterprise Singapore for all double tax deduction claims under the new "e-commerce campaign" qualifying activity. For each business, Enterprise Singapore will only approve double tax deduction support for e-commerce campaigns for a maximum period of one year applied on a per-country basis.

The above enhancements will take effect for qualifying e-commerce campaign start-up expenses incurred on or after 15 February 2023.

See the Enterprise Singapore website at enterprisesg.gov.sg for more details on the enhancements.

Workforce expenditure of employee posted overseas

The further deduction for qualifying expenditure incurred on a range of qualifying market expansion and investment activities was enhanced in the 2015 Budget to include qualifying workforce expenditure incurred for an employee posted overseas subject to the following conditions:

- the employee is a Singaporean citizen or permanent resident of Singapore
- the employee is posted overseas for a minimum period of one year
- the employee's posting is in line with an approved employer's overseas business expansion plans and to provide the employee with overseas exposure and opportunities to gain new skills
- the employee is contractually employed by the approved employer throughout the period of the overseas posting
- the salary expenditure is incurred by the approved employer
- the salary expenditure cannot be deducted against any income that may be liable to tax in the overseas jurisdiction, and
- the overseas establishment was set up, or acquired (including equity interests therein), by the approved employer for 3 years or less. This means that no deduction is available if the overseas establishment is more than 3 years old. Qualifying workforce expenditure will be allowed a deduction if it is incurred for the period from 1 July 2015 to the earlier of:
  - the end of the overseas posting, or
  - the last day of the 3-year period from the date of the establishment or acquisition of the overseas establishment.

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Qualifying workforce expenditure

Only wages and salary for the employee posted overseas qualify for deduction under s 14I of the Act. Bonus, commission, gratuity, leave pay, perquisite, allowance, or any other payment (whether in cash or kind) are excluded.

Cap on qualifying workforce expenditure

The amount of qualifying workforce expenditure to be allowed a further deduction is capped at $15,000 per month per employee subject to a maximum of 5 employees per approved employer per YA.

Qualifying period

The s 14I further deduction is available for qualifying workforce expenses incurred from 1 July 2015 to 31 March 2020, which is extended till 31 December 2025 to continue encouraging internationalisation.

Government administrative body

Applications for the s 14I further deduction of qualifying workforce expenses are processed by Enterprise Singapore (formerly IE Singapore).

Key legislation: *Income Tax Act 1947 (2020 Revised Edition)*, ss 14, 14B, 14H, 14I

¶7-825 Research and development expenditure

Definition

From YA 2009, the term "research and development" (R&D) is defined in 2(1) of the *Income Tax Act* as:

> "any systematic, investigative and experimental study that involves novelty or technical risk carried out in the field of science or technology with the object of acquiring new knowledge or using the results of the study for the production or improvement of materials, devices, products, produce, or processes, but does not include:
>
> (a) quality control or routine testing of materials, devices or products;
>
> (b) research in the social sciences or the humanities;
>
> (c) routine data collection;
>
> (d) efficiency surveys or management studies;
>
> (e) market research or sales promotion;
>
> (f) routine modifications or changes to materials, devices, products, processes or production methods; or
>
> (g) cosmetic modifications or stylistic changes to materials, devices, products, processes or production methods;"
>
> (h) [deleted from YA 2012] development of a computer software that is not intended to be sold, rented, leased, licensed or hired to 2 or more persons who are not related parties . . . to each other, and to the person who develops the software or on whose behalf the development of the software is undertaken.

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Deduction for qualifying R&D expenditure

The deduction for qualifying R&D expenditure is given under one or more of the following sections:

- normal deduction under s 14 for expenditure incurred wholly and exclusively in the production of income
- special deduction under s 14C for expenditure of a capital nature
- further deduction of 100% of the qualifying expenditure incurred for an approved project under s 14E (no approval under s 14E will be granted for any R&D project after 31 March 2020)
- up to YA 2018: enhanced deduction of 50% or 300% (under the PIC scheme) under s 14D
- from YA 2019 to YA 2025: enhanced deduction of 150% for staff costs and consumables incurred on qualifying R&D projects performed in Singapore under s 14D, or
- from YA 2024 to YA 2028: enhanced deduction of 400% for the first $400,000 of staff costs and consumables incurred on qualifying R&D projects conducted in Singapore (under the EIS) under s 14D.

See (EIS introduced in Budget 2023 (see ¶7-750).

Historical Note: PIC scheme

As announced in the 2016 Budget, the PIC scheme will be allowed to lapse after YA 2018, which means that the scheme will not be available from YA 2019.

Deduction for qualifying R&D expenditure under the PIC scheme

The deduction for R&D expenditure under the PIC scheme (see ¶7-750) can be summarised as follows:

- under the PIC scheme: 400% (ie 100% base plus 300% enhanced) tax deduction for the first $400,000 of qualifying expenditure on R&D done in Singapore or overseas in the basis period of YA 2011 to YA 2018
- under the PIC+ scheme: 400% (ie 100% base plus 300% enhanced) tax deduction for the first $600,000 of qualifying expenditure on R&D done in Singapore or overseas in the basis period of YA 2015 to YA 2018 (Income Tax (Productivity and Innovation Credit Plus Scheme) Regulations 2015)
- 150% (ie 100% base plus 50% enhanced) tax deduction for the balance expenditure for R&D done in Singapore
- 100% tax deduction for the balance of all other R&D expenses.

The PIC incentive was available to all businesses from YA 2011 to YA 2018. The PIC+ scheme was available to qualifying SMEs from YA 2015 to YA 2018.

A person could claim:

- under the PIC scheme: enhanced deduction of 300% on the lower of $400,000 and the qualifying expenditure incurred during the basis period for any YA between YA 2011 and YA 2018 (s 14DA(2)), or

Section 45I does not apply to s 12(6) payments that are caught by s 33, the general anti-avoidance rule.

For s 12(6) payments that were made before 17 February 2012 to a non-resident person through its PE in Singapore, the payer was required to withhold tax.

- *Swap payments*

  All *bona fide* interest rate and currency swap payments made by financial institutions are exempt from tax and, therefore, not subject to WHT. The exemption will not apply to payments made to non-residents who have PEs in Singapore.

  (Income Tax (Exemption of Interest and Other Payments for Economic and Technological Development) Notification 2000.)

- *Interest on qualifying debt securities*

  Any interest derived from any qualifying debt securities issued during the period 27 February 1999 to 31 December 2023 (subject to conditions) is exempt from tax (ss 13(1)(a)(ii), 45(9)(a)).

- *Discounts on qualifying debt securities*

  Any discounts on qualifying debt securities issued during the period 17 February 2006 to 31 December 2023 to qualifying non-residents are exempt from tax. Such discount payments to non-residents are therefore not subject to any WHT (ss 13(1)(aa), 45A(2)).

- *Amounts payable from Islamic debt securities*

  Any amount payable from any Islamic debt securities which are qualifying debt securities, and issued during the period 1 January 2005 to 31 December 2023 is exempt (ss 13(1)(ab), 45A(2A)).

- *Prepayment fee, redemption premium or break cost from qualifying debt securities*

  These amounts are exempt if the qualifying debt securities are issued during the period 15 February 2007 to 31 December 2023 (s 45A(2B)(a)).

- *Interest on qualifying project debt securities*

  Any interest derived from any qualifying project debt securities issued during the period 1 November 2006 to 31 December 2025 (subject to conditions) is exempt from tax (ss 13(1)(b)(i), 45(9)(b)). See **¶18-230**.

- *Discount, prepayment fee, redemption premium or break cost from qualifying project debt securities*

  These amounts are exempt if the qualifying project debt securities are issued during the period 15 February 2007 to 31 December 2025 (ss 13(1)(b)(ii), 45A(2B)(b)). See **¶18-230**.

- *Payments for structured products offered by financial institutions*

  Subject to conditions, payments made to non-resident non-individuals for structured products offered by financial institutions for contracts that take effect, are renewed or extended during the qualifying period from 1 January 2007 to 31 December 2026 are exempt from tax (s 13(1)(zj)). (See below.)

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The terms "break cost", "prepayment fee", "qualifying debt securities", "qualifying project debt securities" and "redemption premium" are defined in s 13(16) (s 45A(3)).

Advance Ruling Summary No 4/2020 Published on 30 June 2020 - Exchange Fee does not fall within the definition of "prepayment fee" but falls within the definition of "break cost" under s 13(16) (see ¶18-220)

Advance Ruling Summary No 13/2021 Published on 1 September 2021

Subject:

Whether Exchange Fee on certain notes issued can be regarded as:

a. a gain (or loss) on disposal of the Notes by holders of the Notes ("**Noteholders**") and does not fall under s 12(6) of the Income Tax Act ("**ITA**")1, in which case the tax treatment to the Noteholders would depend on their personal circumstances (ie whether such gain is capital in nature and not taxable, or income in nature and taxable) and such Exchange Fee payable to non-resident Noteholders would not be subject to Singapore withholding tax, or

b. "break cost" or "prepayment fee" (as defined in s 13(16) of the ITA) under the Qualifying Debt Securities ("**QDS**") scheme, in which case the Exchange Fee would not be subject to withholding tax when paid or deemed paid by the Issuer to non-resident Noteholders. Noteholders would also be entitled to the QDS tax concessions and exemptions in respect of such amount under ss 13(1)(ba) and 43N of the ITA, and individuals deriving such income (other than through a partnership in Singapore or from the carrying on of a trade, business or profession in Singapore) would be exempt from tax on such income pursuant to s 13(1)(zk)

Ruled

a. The Exchange Fee is a payment which falls under s 12(6)(a) of the ITA.

b. The Exchange Fee does not fall within the definition of "prepayment fee" under s 13(16) of the ITA.

c. The Exchange Fee falls within the definition of "break cost" under s 13(16) of the ITA. Therefore, subject to satisfying the governing conditions under the Income Tax (Qualifying Debt Securities) Regulations, ss 43N and 13(2F) of the ITA, where applicable:

   i. Noteholders deriving the Exchange Fee will be entitled to tax exemptions and concessions available under ss 13(1)(ba) and 43N of the ITA, and individuals deriving such income (other than through a partnership in Singapore or from the carrying on of a trade, business or profession in Singapore) would be exempt from tax on such income under s 13(1)(zk) of the ITA, and

   ii. The Exchange Fee will not be subject to withholding tax when paid by the Issuer to non-resident Noteholders under the QDS Scheme.

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Reasoned

a. The Exchange Fee falls under s 12(6)(a) of the ITA as it is a payment in connection with the underlying indebtedness of the principal sum of the Notes.

b. The Exchange Fee does not fall within the definition of "prepayment fee" under s 13(16) of the ITA as the Conditions do not provide for an amount for early redemption of the Notes.

c. The Exchange Fee falls within the definition of "break cost" under s 13(16) of the ITA as it represents the amount payable to Noteholders to compensate Noteholders for the loss incurred by them in connection with such early redemption of the Notes.

Relevant Facts

a. The Issuer is a company incorporated in Singapore and listed on the Singapore Exchange Securities Trading Limited.

b. The Issuer had issued a tranche of notes (the "**Notes**") under its multicurrency debt issuance programme ("**Programme**"). The Notes are qualifying debt securities ("**QDS**") for the purposes of the ITA.

c. The Notes are constituted by a trust deed between the Issuer and a trustee, which includes the terms and conditions of the Notes issued under the Programme ("**Conditions**") and is governed by Singapore law.

The Exchange Offer

d. The Issuer invited all Noteholders ("**Invitation**") to offer to exchange with the Issuer their outstanding Notes for an exchange consideration ("**Exchange Consideration**") pursuant to the terms and conditions of the Invitation ("**Exchange Offer**").

e. The Exchange Consideration in respect of the offered Notes accepted for exchange by the Issuer pursuant to the Exchange Offer comprises:

   i. new notes to be issued by the Issuer pursuant to the Programme (the "**New Notes**")

   ii. an amount in cash

   iii. the Exchange Fee, and

   iv. accrued and unpaid interest.

f. By participating in the Invitation, each Noteholder agrees that any exchange of its offered Notes for New Notes constitutes a purchase of its offered Notes by the Issuer pursuant to the Conditions, and the receipt of the Exchange Consideration by such Noteholder pursuant to the Exchange Offer constitutes the payment of consideration by the Issuer for such purchase.

g. With respect to the Exchange Offer, the New Notes are also intended to be QDS. Notes not exchanged in the Invitation will remain outstanding.

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The Exchange Fee

h. The Exchange Fee represents the amount payable to Noteholders (over the principal amount of the Notes) by the Issuer pursuant to the Exchange Offer to compensate Noteholders for the loss incurred by them in connection with such early redemption of the Notes.

Advance Ruling Summary No 14/2022 Published on 1 August 2022 – Ruled Tender Premium fell within the definition of "break cost" under s 13(16) as it represented the amount payable to Noteholders to compensate Noteholders for the loss incurred by them in connection with such early redemption of the Notes. Tender Premium would not be subject to withholding tax when paid by the Issuer to non-resident Noteholders under the QDS scheme.

Many of Singapore's tax treaties prescribe a reduced tax rate for interest income, usually 10%; some provide for tax exemption. (For details, see the link in ¶22-000.)

Interest rate swap payments

The IRAS has long held the view that all interest rate swap (IRS) payments are "other payments made in connection with any loan or indebtedness" under s 12(6)(a) and therefore subject to WHT if they are made to a non-resident person.

The issue of whether IRS payments fall within the ambit of s 12(6)(a) was examined in the High Court case *ACC v CIT* (2010) MSTC ¶70-007; [2010] SGHC 316.

ACC v CIT

ACC, a Singapore-incorporated company, and its overseas subsidiaries (most of which are special purpose companies (SPCs)) are in the business of aircraft leasing. Each SPC owns only one aircraft and had entered into a separate loan agreement with offshore banks to finance the purchase of the aircraft. The SPC then leased its aircraft to airline companies.

The SPC would be exposed to interest rate fluctuations if the lease agreement was at a fixed-rate rent and the loan agreement at a floating-rate interest. To minimise such exposure, the SPC would hedge its interest rate risk by entering into an IRS arrangement with its bank that would normally require some form of guarantee. To dispense with the need to provide the guarantees and to reduce certain administrative matters, ACC put in place an arrangement whereby it would enter into IRS arrangements with the Singapore banks (including Singapore branches of foreign banks) and then enter into IRS arrangements with its SPCs mirroring those arrangements with the Singapore banks.

The taxpayer and Comptroller of Income Tax agreed that the IRS payments were not interest, commission or fees. The issue was whether the IRS payments fell within the meaning of "any other payments in connection with any loan or indebtedness" under s 12(6). The High Court's decision was in the negative, and so the payments were not subject to WHT. The High Court ruled that:

- The expression "in connection with" in s 12(6)(a) is intended to include payments that are of a similar nature to interest and that arise as a result of obtaining finance. That expression does not cover a loan or indebtedness not involving the Singapore resident payer (ACC).
- At the point the IRS arrangement was entered into, it could not be ascertained which of the counterparties (ie ACC and the SPC) would be indebted to the other in relation to the net payment that had to be made under the arrangement. Under the IRS arrangement, there was therefore no subsisting loan or indebtedness between the counterparties. The loans were between the non-resident persons, namely the SPCs and the foreign banks.

IRAS position

In light of the *ACC* decision, the IRAS has published on its website at iras.gov.sg the following examples of payments made in respect of interest rate/currency swap arrangements or structured products which are regarded as subject to WHT:

- Where the swap payments and interest payments together give the true economic effect of a financing arrangement. This would be the case if:
  - the swap arrangement is directly connected with a financing arrangement and the counterparties for the 2 arrangements are the same, or
  - the documentation shows explicitly that the swap arrangement has been entered into to hedge a borrowing by the payer of the swap payments or the interest liabilities on such borrowing.
- Where the economic substance of a swap arrangement is that of a loan or a financing arrangement.
- Where the payments are in respect of any structured products (other than payments which are exempt under s 13(1)(zj)).

WHT does not apply, however, to swap payments if the swap arrangement is not entered into in relation to any borrowing by the payer of the swap payments unless such arrangement is in substance a loan or financing arrangement of the payer.

The above IRAS treatment takes effect for any swap payments due and payable on or after 26 November 2010.

Payments in respect of non-financial derivatives

Non-financial derivatives are derivatives where the payoffs are linked in whole to the payoffs or performance of the underlying non-financial assets.

Such derivatives take the form of forward, futures, swap or options. Examples include commodity, emission and freight derivatives.

The IRAS has stated that WHT is **not applicable** to payments exchanged or made in respect of non-financial derivatives when:

- the derivative does not effectively give rise to the creation of any loan or indebtedness

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- the payment is not effectively a return for the use of money or provision of credit, and
- the payment made is at arm's length.

Source: IRAS website at iras.gov.sg

WHT exemptions for the financial sector

As set out above, in general, interest payments made by a tax resident or PE in Singapore to non-residents are subject to a 15% WHT. There is a range of WHT exemptions for the financial sector which apply to different financial institutions for payments made under different types of financial transactions.

As announced in the 2018 Budget, as part of the Government's process to continually review tax concessions to ensure their relevance and usefulness, the following changes were proposed, and as announced in the 2022 Budget, selected WHT exemptions were either extended or lapsed:

(a) An extension to 31 December 2026 for WHT exemptions for the following payments, to continue supporting the competitiveness of the financial sector:
  - payments made under cross currency swap transactions made by Singapore swap counterparties to issuers of Singapore dollar debt securities,
  - payments made under interest rate or currency swap transactions by the Monetary Authority of Singapore (MAS),
  - specified payments made under securities lending or repurchase agreements by specified institutions, and
  - interest on margin deposits paid by members of approved exchanges for transactions in futures.
  - interest on margin deposits paid by members of approved exchanges for spot foreign exchange transactions (other than those involving the Singapore dollar).

(b) A lapse after 31 December 2022 for the following WHT exemption, as such payments can be covered under the existing WHT exemption for payments on over-the-counter financial derivatives:
  - payments made under interest rate or currency swap transactions by financial institutions

(c) The WHT exemptions for the following payments will be withdrawn:
  - interest from approved Asian Dollar Bonds, and
  - payments made under over-the-counter financial derivative transactions by companies with Financial Sector Incentive-Derivatives Market awards that were approved on or before 19 May 2007.

The change in (c) will take effect for payments under agreements entered into on or after 1 January 2019.

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Types of royalty income that do not qualify for 10% final WHT

The following types of income do not qualify for the 10% final tax (s 43(7)(a)):

- royalties and other payments received by an author, composer or choreographer, or any company in which the author, composer or choreographer beneficially owns all the issued shares for the assignment of, or the right to use, the copyright in any literary, dramatic, musical or artistic work (s 10(14)), and
- royalties and other payments which are derived by an inventor, author, proprietor, designer or creator of an approved invention or approved innovation, or by any company in which he beneficially owns all the issued shares, for the assignment of, or for the rights in the approved invention or approved innovation (s 10(16)).

Where the royalties qualify for the concession under s 10(14), the non-final WHT rate of:

- 17% (for non-individuals), or
- 22% from YA 2017 to YA 2023 and 24% from YA 2024 (for non-resident individuals)

will apply to the lower of:

- net royalties, or
- 10% of the gross amount of royalties

payable to the non-resident.

The above tax concession for s 10(16) royalty income ceased to apply from YA 2017 (s 10(16A)).

Rights-based approach to characterise payments for software, information and digitised goods

> **Historical Note: Position before 28 February 2013**
>
> Before 28 February 2013, the IRAS treated all payments for the use of software as royalty for tax purposes. As a concession, 4 types of software payments (ie shrink-wrap software, site-license, downloadable software, and software bundled with computer hardware) qualified for WHT exemption for a 10-year period up to 27 February 2013 provided that the payer had not obtained any right to exploit the copyright of the software (for the Historical Note, see the *Singapore Master Tax Guide 2015/16*).

From 28 February 2013, the IRAS has adopted the **rights-based approach** to characterise software payments and payments for the use of or the right to use information and digitised goods. Essentially, the rights-based approach characterises a payment based on the nature of the rights transferred in consideration for the payment. It distinguishes between:

- the transfer of a "copyright right", and
- the transfer of a "copyrighted article"

from the owner to the payer.

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(See IRAS e-Tax Guide "Rights-Based Approach for Characterising Software Payments and Payments for the Use of or the Right to Use Information and Digitised Goods" (SRL ¶30-117).)

Transfer of copyright right

A transaction involves a **copyright right** if a payer is allowed to commercially exploit the right. The term "commercially exploit" means to be able to:

- reproduce, modify, adapt and distribute the software, information or digitised goods, or
- prepare derivative works based on the copyrighted software program, information or digitised good for distribution to the public.

Transfer of copyrighted article

By contrast, a **copyrighted article** is transferred if the rights are limited to those necessary to enable the payer to operate the software or use the information or digitised good for personal consumption or use within their business operations. In many instances, the user is provided merely with a copy of the product that they can download to a device for use.

Multiple rights in single payment

In some cases, a payer may obtain multiple rights in one payment. In determining whether a payment is for:

- the right to use a copyrighted article (in which case it is business profit), or
- a copyright right (in which case it is a royalty),

the primary purpose of the payment will be examined.

> **Example 8**
>
> If a customer downloads a book for personal enjoyment, the payment is primarily for acquiring a copyrighted article (ie a copy of the book). To the extent that the act of copying the digital content onto the customer's device involves a right to copy the content, such a right is ancillary and incidental. The payment is essentially a payment for a copyrighted article, ie it is a **business profit** and not a royalty. The payment does not, therefore, fall within the scope of s 12(7), and if it is made to a non-resident person, is not subject to WHT.

Payments treated as royalties

Thus, under the rights-based approach, in relation to:

- payments for the use of any software, or
- payments for the use of information or digitised goods,

the IRAS will regard the transferor as deriving **royalty** income only if the partial transfer of the rights permits the payer to commercially exploit the rights. Consequently, the previous WHT exemption regime for:

The following independent scenarios 6 to 10 illustrate the application of s 12(7)(a) and (b) read with s 12(7A). In all of them, assume that SCo is a Singapore incorporated and resident company.

Scenarios 6 to 10 (to illustrate how s 12(7)(a)/(b) and 12(7A) are applied)	*Is the payment concerned deemed derived from Singapore?*
Scenario 6 SCo paid royalty based on 5% of its annual sales in Singapore to USCo, a US incorporated and resident company, which granted SCo the use of a patent owned by USCo.	The royalty income is **deemed derived** from Singapore (under s 12(7)(a)) for either or both of the following reasons: • it is borne by SCo, a Singapore resident person, in respect of its business operations in Singapore, or • it is deductible against SCo's Singapore-sourced income. As the payment is royalty, applying s 12(7A) (scope of payments under s 12(7A) excludes royalty) will not change the result that it is deemed derived from Singapore.
Scenario 7 Same as Scenario 6 except that SCo had a manufacturing branch in Hong Kong, and the royalty was payable instead on the sales of the Hong Kong manufactured products.	The royalty income is **not deemed derived** from Singapore as: • it is borne by SCo, a person resident in Singapore, in respect of a PE outside Singapore (ie the Hong Kong branch), and • it is not deductible against Singapore-sourced income (on the contrary, the royalty expense is deductible against the Hong Kong branch business income).
Scenario 8 USCo granted SCo the use of USCo's engineering technique and confidential data involved in a secret process of strengthening steel for industrial purposes. The payments for this know-how are due annually and based on 1% of SCo's annual sales revenue for the next 5-year period.	The know-how payments are **deemed derived** from Singapore (under s 12(7)(b) first limb) for either or both of the following reasons: • they are borne by SCo, a person resident in Singapore, in respect of its Singapore business operations, or • they are deductible against SCo's Singapore-sourced income (on the basis that they are recurrent and closely connected to SCo's income-earning operations and are not capital in nature). As the payment is know-how payment, applying s 12(7A) (scope of payments under s 12(7A) excludes know-how payments) will not change the result that it is deemed derived from Singapore.

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Scenarios 6 to 10 (to illustrate how s 12(7)(a)/(b) and 12(7A) are applied)	*Is the payment concerned deemed derived from Singapore?*
Scenario 9 Assume that in Scenario 8, USCo also sent 2 of its employees to SCo's business premises in Singapore to demonstrate how the secret process is implemented. SCo paid a fee of $500,000 to USCo for this technical assistance.	The technical assistance fee is **deemed derived** from Singapore (under s 12(7)(b) second limb) for either or both of the following reasons: • it is borne by SCo, a person resident in Singapore, in respect of its Singapore business operations, or • it is deductible against SCo's Singapore-sourced income (on the basis that it is closely connected to SCo's income-earning operations and are not capital in nature — see ¶7-100ff). As the technical assistance is performed in Singapore, s 12(7A) does not apply.
Scenario 10 Same as Scenario 9 except that the technical assistance is conducted by USCo's employees entirely in the US. USCo does not have any business presence in Singapore.	The technical assistance fee is deemed derived from Singapore under s 12(7)(b) second limb but s 12(7) is subject to s 12(7A) (scope of payments includes technical assistance fees) which must therefore be examined. As the technical assistance service is performed outside Singapore, s 12(7A)(a) is satisfied and so the fee is **not deemed derived** from Singapore. [**Specifically:** The technical assistance is performed outside Singapore for SCo, a person resident in Singapore, by USCo, a non-resident person who: • is not incorporated in Singapore, and • does not, by itself or in association with others, carry on a business in Singapore and does not have a PE in Singapore (s 12(7A)(a))].

The IRAS has stated that the following rules apply to payments for services rendered:

- Where payment is made to a non-resident company for the installation of equipment, technical support services, training, consultancy or other services provided by the non-resident company, WHT is applicable on the service fees **attributable to the work done in Singapore**.
- If the payer pays for the monthly allowance of the non-resident company's employees who are sent to Singapore to perform the services, WHT is applicable on the allowance, as the monthly allowance is considered additional service fees paid to the non-resident company.
- However, if the non-resident company provides the services via electronic means from overseas (eg internet presentation, email and

income derived from designated investments subject to conditions. The list of designated investments currently includes physical commodities that are subject to the following conditions:

- the trading of the physical commodity must be incidental to the trading of the derivative commodity (the incidental condition), and
- the trade volume of such physical commodity is capped at 15% of the total trade volume of those physical commodities and related commodity derivatives (the cap).

The 2022 Budget boosted Singapore's asset management industry by refining the conditions imposed on the investment in physical investment precious metals (IPMs) under the list of designated investments as follows:

- the incidental condition will be removed, ie investments in physical IPMs need not be incidental to the trading of derivative IPMs, and
- the cap will be revised to 5% of the total investment portfolio for the taxpayer's incentive award under ss 13D, 13O and 13U of the *Income Tax Act 1947 (2020 Revised Edition)*.

These refinements became effective on and after 19 February 2022:

Key legislation: *Income Tax Act 1947 (2020 Revised Edition)*, ss 12(6), 13D, 13O, 13U, 43E, 43J, Income Tax (Concessionary Rate of Tax for Financial Sector Incentive Companies) Regulations 2017.

MAS Practice: FDD Cir 05/2003 "Details of Financial Sector Incentive (FSI) Scheme", MAS Notice PSM-N01

¶18-170 Financial Sector Incentive scheme qualifying activities and criteria for enhanced-tier awards

Qualifying activities

The Financial Sector Incentive (FSI) scheme qualifying activities are listed below under the respective enhanced-tier (ET) awards.

ET Award: Bond Market (FSI-BM)

- Arranging, underwriting and distributing any issued QDS.
- Trading of QDS and qualifying project debt securities (QPDS) with effect from 16 February 2008.

ET Award: Equity Market (FSI-EM)

- Arrangement, underwriting, management and placement of initial public offerings of stocks, shares, bonds and other securities issued by foreign companies, for the purpose of listing on the SGX.
- Sales of stocks, shares, bonds and other securities of foreign companies listed on the SGX.

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- Services (including brokerage, nominee and custodian services) in connection with transactions relating to stocks, shares, bonds and other securities of foreign companies listed on the SGX.

ET Award: Capital Market (FSI-CM)

- Trading in debt and equity markets activities.
- Provision of services in relation to or investing in debt and equity markets activities.

With effect from 1 January 2014, the FSI-BM and FSI-EM schemes have been merged to form a FSI-CM scheme.

ET Award: Derivatives Market (FSI-DM)

- Providing an intermediary service in connection with transactions relating to qualifying activities.
- Trading of qualifying over the counter (OTC) commodity derivatives.
- Trading of exchange-traded OTC financial derivatives with effect from 16 February 2008.
- Trading of exchange-traded commodity derivatives.
- Trading of exchange-traded OTC commodity derivatives.

With effect from 1 January 2014, the 5 sub-schemes under the FSI-DM scheme have been merged into a single FSI-DM scheme.

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ET Award: Credit Facilities Syndication (FSI-CFS)

- Arranging, underwriting and participating in syndicated offshore credit facility or offshore guarantee facility, where the loan is used outside Singapore and interest is not deducted against income accruing in or derived from Singapore.
- Provision of project finance (PF) advisory services with effect from 1 January 2014.

Criteria for ET awards

The qualifying criteria for new applicants for a 5-year (or up to 10-year depending on size and activities) ET award are as follows:

ET Award: Bond Market (FSI-BM)

- At least 8 professional staff covering origination, trading and distribution of debt securities.
- The degree of expertise in origination and structuring, as well as the extent of debt sales, distribution and trading capabilities in Singapore.

ET Award: Derivatives Market (FSI-DM)

- At least 6 professional staff covering origination, structuring and trading activities in relation to financial derivatives.
- The extent to which the financial derivatives team in Singapore has responsibility for structuring or trading of derivatives.

arrangements. This has to be read in conjunction with the MAS Circular FDD 11/2006, issued on 27 July 2006.

Historical Note: Enhanced-tier FSI-IF from 1 April 2008 to 31 March 2013

The enhanced-tier (ET) award FSI-IF, introduced in the 2008 Budget, granted a concessionary tax rate of 5% on the qualifying income derived from the following qualifying *Shariah*-compliant activities, subject to certain conditions:

- lending and related activities, and
- fund management and other investment advisory activities.

The approval period for the FSI-IF award was from 1 April 2008 to 31 March 2013. Once approved, the successful applicant enjoyed the 5% concessionary tax rate for 5 years. There was no extension of the approval period beyond 31 March 2013 or the incentive tenure beyond 5 years. The FSI-IF award expired on 31 March 2013 and the FSI-ST award covers the existing qualifying Islamic finance activities.

Islamic concepts/tax treatment

Murabaha concept

Murabaha is basically a cost-plus financing. The bank will finance the purchase of an asset by buying on behalf of its customer and then on-sell it to its customer at an agreed mark-up.

Income tax — any gains or profits accrued and any expenses incurred, in lieu of interest, will be regarded as interest.

Goods and services tax (GST) — for a loan used for the purchase of non-residential property:

- any mark-up on the selling price of the non-residential property by the bank to the buyer will be exempt from GST, and
- the bank will be allowed to claim GST on the purchase of the non-residential property from the vendor in full.

Mudarabah concept

Mudarabah is a trust financing arrangement where the *"rabb-ul-mal"* (the investor or capital provider) provides funds for a specified purpose to the *"mudarib"* (the investment manager) who will manage the fund for an agreed profit-sharing ratio.

Income tax — Any profit payable to a customer, in lieu of interest, by a qualifying financial institution, will be regarded as interest.

Ijara wa igtina concept

Ijara wa igtina is an Islamic leasing arrangement where the bank will buy an asset and lease it to its customer with an option to purchase the asset at the end of the lease.

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Income tax — any gains or profits accrued and any expenses incurred, in lieu of interest, will be regarded as interest.

GST — for a loan used for the purchase of non-residential property:

- any mark-up on the selling price of the non-residential property by the bank to the buyer will be exempt from GST, and
- the bank will be allowed to claim GST on the purchase of the non-residential property from the vendor in full.

Sukuk concept

Sukuk is the Arabic name for a financial certificate. *Sukuk* certificates are generally backed by an underlying tangible asset.

Stamp duty — stamp duty on instrument(s) related to the transfer of immovable properties that is in excess of that chargeable in the case of an equivalent conventional bond issue, may be remitted, subject to conditions. For the rules on remission, see the Stamp Duties (Qualifying Financing Arrangement) (Remission) Rules 2005, S 733/2005.

Key legislation: *Income Tax Act 1947 (2020 Revised Edition)*, s 34B.

MAS Practice: MAS Circular FDD 11/2006.

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BOND MARKET

¶18-210 Approved intermediary

From 1 January 2004, the Bond Market (FSI-BM) award was merged under the Financial Sector Incentive (FSI) scheme. Income derived from standard-tier (ST) activities is taxed at:

- 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

while income derived from enhanced-tier (ET) activities, ie arranging, underwriting and distributing any QDS is taxed at 5% (see ¶18-180). The scope of qualifying activities under the existing FSI-BM ET award was expanded to include the trading of QDS and qualifying project debt securities (QPDS) from 16 February 2008.

¶18-220 Income derived from debt securities

The term "debt securities" is defined in s 43H(4) of the *Income Tax Act 1947 (2020 Revised Edition)* to mean bonds, notes, commercial papers, treasury bills, certificates of deposits and AT1 instruments within the meaning of s 10I(2). The term "qualifying debt securities", on the other hand, is defined in s 13(16) to mean:

- Singapore Government securities issued during the period from 28 February 1998 to 31 December 2023

- any debt securities arranged by the following during the stated period:

	Period
– Financial institutions	28 February 1998 to 31 December 2013
– ABIs	27 February 1999 to 31 December 2023
– FSI-BM companies	1 January 2004 to 31 December 2018
– FSI-ST and FSI-CM companies	1 January 2014 to 31 December 2023 (extended till 31 December 2028)

- qualifying Islamic debt securities, subject to conditions, arranged and issued by the following during the stated period:

	Period
– Financial institutions	1 January 2005 to 31 December 2013
– FSI-BM companies	1 January 2005 to 31 December 2018
– FSI-ST and FSI-CM companies	1 January 2014 to 31 December 2023 (extended till 31 December 2028)

For debt securities issued during the period from 1 January 2014 to 31 December 2023 (extended till 31 December 2028):

- the requirement that the QDS has to be substantially arranged in Singapore is considered met by an FSI-ST company if the Singapore office of the FSI-ST company has debt capabilities, and
- debt securities arranged by an FSI-CM company are considered to have met the requirement that the QDS is substantially arranged in Singapore
  - For insurance-linked securities (ILS) that are unable to meet the condition of being substantially arranged by an FSI company, at least 20% of the ILS issuance costs incurred by the issuer is paid to Singapore businesses.

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Budget 2023 Extension and Streamlining

The FSI schemes (FSI-Capital Market, FSI-Derivatives Market, FSI-Credit Facilities Syndication, FSI-Fund Management, FSI-Headquarter Services, FSI-Trustee Companies, FSI-Standard Tier) are extended till 31 December 2028.

QDS scheme extended till 31 December 2028. Scope of qualifying income under the QDS scheme streamlined and clarified such that it includes all payments in relation to early redemption of a QDS.

To ensure continued relevance, the requirement that the QDS has to be substantially arranged in Singapore will be rationalised, as follows:

a) For all debt securities that are issued on or after 15 February 2023, they must be substantially arranged in Singapore by a financial institution holding a specified licence (instead of a financial sector incentive (capital market) company or a financial sector incentive (standard tier) company).

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b) For insurance-linked securities (ILS) that are issued on or after 1 January 2024, if they are unable to meet the condition in (a) above, at least 30% of the ILS issuance costs incurred by the issuer must be paid to Singapore businesses.

All other conditions of the scheme remain the same.

Advance Ruling Summary No 1/2020 Published on 30 April 2020 – Ruled Subordinated perpetual securities regarded as "debt securities" under s 43N(4) and reg 2 of the Income Tax (Qualifying Debt Securities) Regulations ("QDS Regulations"), with distributions regarded as interest payable on indebtedness and will enjoy the tax concessions and exemptions available for QDS.

Key features of Securities support the character of the Securities as "debt securities":

i. Confer right to receive fixed rate distributions, payable semi-annually in arrears (each a "Distribution Payment Date"). Distribution rate does not depend on the profit performance of the issuer. There is a step-up feature.

ii. Issuer may in its sole discretion elect to defer the payment of Distribution scheduled to be paid on a Distribution Payment Date. Distributions that are deferred ("Arrears of Distribution") are cumulative. Arrears of Distribution will bear interest at the prevailing Distribution Rate (the "Additional Distribution Amount"). Issuer may further elect to defer any Arrears of Distribution.

iii. Issuer is not allowed to pay dividends, distributions or make any other payment to any of the issuer's junior obligations (which includes the ordinary shares of the issuer) or to redeem, reduce or acquire any of the issuer's junior obligations unless and until the issuer has satisfied in full all outstanding Arrears of Distribution; or permitted to do so by an extraordinary resolution of the holders of the Securities ("Securityholders").

iv. Issuer is required to satisfy all outstanding Arrears of Distribution on the earliest of the date of redemption of the Securities, the occurrence of certain events or on the winding up of the issuer.

v. Securities do not have a fixed redemption date. Issuer has the option to redeem the Securities in certain instances. Any redemption by issuer would be at the principal value of the Securities, together with Distributions accrued (including Arrears of Distribution and Additional Distribution Amount) (if any) to the date of redemption.

vi. Securities are direct, unconditional, subordinated and unsecured obligations of the issuer. In the event of winding up of the issuer, the rights of the Securityholders rank junior to the senior creditors of the issuer but *pari passu* with all other subordinated obligations of the issuer and in priority to the holders of the ordinary shares of the issuer.

a preferential right to return of assets in the winding up of the Issuer; ahead of the holders of junior obligations of the Issuer (including the unitholders of the Issuer); and junior to the claims of all other present and future creditors of the Issuer.

vii. The Securityholders are not reflected in the Issuer's register of unitholders and do not have any statutory right to attend and vote at general meetings of the Issuer. The issuance of the Securities does not require the approval of the unitholders of the Issuer.

Advance Ruling Summary No 6/2020 Published on 30 June 2020 – Ruled subordinated perpetual securities regarded as "debt securities" based on key features, for the purpose of s 43N(4) and reg 2 of the Income Tax (QDS) Regulations. Distributions (including Arrears of Distribution and any Additional Distribution Amount) payable on the Securities would be regarded as interest payable on indebtedness and eligible for the tax concessions and exemptions available for QDS, assuming the other requisite conditions for the Securities to be QDS are satisfied; and issuer would be entitled to tax deductions on the Distributions as interest, subject to the provisions of s 14(1)(a).

Key features of Securities:

i. The Securities are not regarded as "shares" under the relevant legislation of the country where the issuer is incorporated.

ii. The holders of the Securities ("**Securityholders**") are not reflected in the issuer's register of members but are reflected in the issuer's register of debenture holders.

iii. The Securityholders are not entitled to the rights enjoyed by the shareholders of the issuer and do not have the right to attend and vote at general meetings of the issuer.

iv. The Securities confer the right to receive fixed rate distributions, payable semi-annually in arrears (each a "**Distribution Payment Date**"). The distribution rate does not depend on the profit performance of the issuer. There is a step-up feature.

v. The issuer may in its sole discretion elect to defer the payment of Distributions scheduled to be paid on a Distribution Payment Date.

vi. Deferred Distributions ("**Arrears of Distribution**") will bear interest at the prevailing Distribution Rate ("**Additional Distribution Amount**"). The issuer may further elect to defer any Arrears of Distribution.

vii. The issuer is not allowed to pay dividends, distributions or make any other payment to any of the issuer's junior obligations or to redeem, reduce or acquire any of the issuer's junior obligations unless and until the issuer has satisfied in full all outstanding Arrears of Distribution; or permitted to do so by an extraordinary resolution of the Securityholders.

viii. The Securities do not have a maturity date. The issuer has the option to redeem the Securities in certain instances. Any redemption by the issuer would be at the principal value of the Securities, together with

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Distributions accrued (including Arrears of Distribution and Additional Distribution Amount) (if any) to the date of redemption.

Advance Ruling Summary No 7/2020 Published on 3 August 2020 – Ruled subordinated perpetual securities regarded as "debt securities" based on key features, for the purpose of s 43N(4) and reg 2 of the Income Tax (QDS) Regulations. Distributions (including Arrears of Distribution and any Additional Distribution Amount) payable on the Securities would be regarded as interest payable on indebtedness and eligible for the tax concessions and exemptions available for QDS assuming requisite conditions for the Securities to be QDS are satisfied and issuer entitled to tax deductions on the Distributions (including Arrears of Distribution and any Additional Distribution Amount) as interest if such Distributions (including Arrears of Distribution and any Additional Distribution Amounts) are incurred on capital (raised through the issuance of the Securities) employed in acquiring the income of the issuer that is chargeable to tax, subject to the provisions of s 14(1)(a) and not prohibited under other sections of the ITA.

The Distributions accruing from the issue date of the Securities (including Arrears of Distribution and any Additional Distribution Amounts) will be deductible only when they are legally due and payable and not based on their scheduled distribution payment dates.

Key features of Securities

i. The Securities confer the right to receive fixed rate distributions, payable semi-annually in arrears (each a "**Distribution Payment Date**"). The distribution rate does not depend on the profit performance of the issuer and bears a step-up feature.

ii. The issuer may in its sole discretion elect to defer the payment of Distribution scheduled to be paid on a Distribution Payment Date. Distributions that are deferred ("**Arrears of Distribution**") are cumulative. Arrears of Distribution will bear interest at the prevailing Distribution Rate (the "**Additional Distribution Amount**"). The issuer may further elect to defer any Arrears of Distribution.

iii. Save in connection with any employee benefit plan or similar arrangements and as a result of the exchange or conversion of parity obligations for junior obligations of the issuer or the Guarantor, the issuer and the Guarantor are not allowed to pay dividends, distributions or make any other payment to any of the issuer or the Guarantor's junior obligations or to redeem, reduce, cancel, buy back or acquire any of the issuer or the Guarantor's junior obligations unless and until the issuer has satisfied in full all outstanding Arrears of Distribution; or permitted to do so by an extraordinary resolution of the holders of the Securities ("**Securityholders**").

iv. The Securities do not have a fixed redemption date, but the issuer has the option to redeem the Securities in certain instances.

v. The issuer is required to satisfy all outstanding Arrears of Distribution and any Additional Distribution Amounts on the earliest of the date of

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Distributions (including Arrears of Distribution) will be deductible only when they are legally due and payable and not based on their scheduled distribution payment dates.

Key features of Securities:

i. The Securities confer a right to the Securityholders to receive fixed rate distributions payable semi-annually in arrears (each a **"Distribution Payment Date"**). The distribution rate bears a step-up feature.

ii. The Securityholders are not conferred any shareholding and residual interest in the issuer and the payment of Distributions is not dependent on the issuer or the Guarantor's profit performance.

iii. The issuer or the Guarantor may, in its sole and absolute discretion, defer the payment of any or all the Distributions unless a compulsory distribution payment event has occurred. Any deferred Distribution will constitute Arrears of Distribution.

iv. Distributions will accrue on each Arrears of Distributions for so long as such Arrears of Distribution remains outstanding at the prescribed rate of distribution and will be added to such Arrears of Distributions (and thereafter bear Distributions accordingly) on each Distribution Payment Date.

v. There is no limit as to the number of times the Distributions and Arrears of Distributions may be deferred.

vi. The issuer and the Guarantor are not allowed to declare or pay any discretionary dividends, distributions or make any other payments on, any of the issuer or the Guarantor's junior obligations, other than a dividend, distribution or other payment in respect of an employee benefit plan or similar arrangement or to redeem, reduce, cancel, buy back or acquire any of the issuer or the Guarantor's junior obligations, unless and until the issuer or the Guarantor has satisfied in full all outstanding Arrears of Distribution; or is permitted to do so with the consent of the Securityholders.

vii. The Securities have no fixed redemption date, but the issuer has the option to redeem the Securities in certain instances.

viii. The issuer is obliged to satisfy all Arrears of Distribution on the earliest of the date of redemption of the Securities or the occurrence of certain events including on the winding up of the Guarantor.

ix. The Securities constitute direct, unconditional, unsecured and unsubordinated obligations of the issuer. They rank *pari passu* with all other outstanding unsecured and unsubordinated obligations of the issuer, but, in the event of insolvency, only to the extent permitted by applicable laws relating to creditors' rights.

x. The Guarantor unconditionally and irrevocably guarantee on an unsubordinated basis the due payment of the principal of and Distributions on the Securities and all other money payable by the issuer under the trust deed constituting the issuance of the Securities.

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Advance Ruling Summary No 7/2021 Published on 1 July 2021 – Ruled subordinated notes regarded as "debt securities" for the purpose of s 43N(4) of the ITA and reg 2 of the QDS Regulations. Interest (including Arrears of Interest and any Additional Interest Amount) payable on the Notes will be regarded as interest payable on indebtedness. Subject to the Notes satisfying the governing conditions, the Noteholders will be entitled to the tax concessions and exemptions under ss 43N and 13(1)(a) of the ITA respectively under the QDS scheme.

Key features of Notes:

i. The holders of the Notes (**"Noteholders"**) are not reflected in the issuer's register of members. The Noteholders do not have any statutory right to attend and vote at general meetings of the issuer.

ii. The Notes confer the right to receive fixed rate Interest payable semi-annually in arrears (each an **"Interest Payment Date"**). The interest rate does not depend on the profit performance of the issuer.

iii. The issuer may in its sole discretion elect to defer the payment of Interest scheduled to be paid on an Interest Payment Date.

iv. Deferred Interest (**"Arrears of Interest"**) will bear interest at the prevailing Interest Rate (**"Additional Interest Amount"**). The issuer may further elect to defer any Arrears of Interest.

v. The issuer is not allowed to pay dividends, distributions or make any other payment to any of the issuer's junior obligations (including contribution of any monies to a sinking fund for the payment of any dividends, distributions or other payments to any such junior obligations) or to redeem, reduce, cancel, buy-back or acquire any of the issuer's junior obligations (including contribution of any monies to a sinking fund for the redemption, capital reduction, buy-back or acquisition of any such junior obligations) unless and until the issuer has satisfied in full all outstanding Arrears of Interest; or permitted to do so by an extraordinary resolution of the Noteholders.

vi. The Notes have a maturity date. The issuer has the option to redeem the Notes in certain instances. Any redemption by the issuer would be at the principal value of the Notes, together with Interest accrued (including Arrears of Interest and Additional Interest Amount) (if any) to the date of redemption.

vii. The issuer is required to satisfy all outstanding Arrears of Interest on the earliest of the date of redemption of the Notes, the occurrence of certain events or on the winding up of the issuer.

viii. The Notes constitute direct, unsecured and subordinated obligations of the issuer and shall at all times rank *pari passu* and without preference among themselves. On the winding-up of the issuer, the Notes will rank below other creditors but immediately ahead of the issuer's shares.

Advance Ruling Summary No 8/2021 Published on 2 August 2021 – Ruled Fixed Rate Subordinated Perpetual Securities regarded as "debt securities" for the purpose of s 43N(4) of the ITA and reg 2 of the QDS Regulations.

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Distribution") (in whole or in part) by complying with the notice requirements.

vii. Subject to certain exceptions, if on any Distribution Payment Date, payments of all Distributions scheduled to be made are not made in full, the Issuer shall procure that the REIT and its subsidiaries shall not:

(i) declare or pay any dividends, distributions or make any other payment on any of the Junior Obligations of the REIT or (except on a pro-rata basis) any of the Parity Obligations of the REIT, or

(ii) redeem, reduce, cancel, buy-back or acquire for any consideration in respect of, any of the Junior Obligations of the REIT, or (except on a pro-rata basis) any of the Parity Obligations of the REIT in each case, unless and until either a redemption of all the outstanding Securities has occurred, the next scheduled distribution has been paid in full or an Optional Distribution equal to the amount of a distribution payable with respect to the most recent Distribution Payment Date that was unpaid in full or in part, has been paid in full or the Issuer is permitted to do so by an Extraordinary Resolution of the Security-holders.

viii. The Securities have no fixed redemption date. The Issuer has the option to redeem the Securities in certain instances.

ix. The Securities constitute direct, unconditional, subordinated and unsecured obligations of the Issuer and shall at all times rank *pari passu*, without any preference or priority among themselves, and *pari passu* with any Parity Obligations of the REIT.

x. In the event of the Winding-Up of the REIT, the Securityholders rank *pari passu* with the holder of one of a class of preferred units in the capital of the REIT having a preferential right to return of assets in the winding-up of the REIT, and so rank ahead of the holders of junior obligations of the REIT but junior to the claims of all other present and future creditors of the REIT.

xi. The Securityholders will not be reflected in the REIT's register of unitholders. The Securityholders will not be entitled to the rights conferred upon unitholders such as the statutory right to attend and vote at general meetings of the REIT.

xii. The Securities are treated as equity in the REIT's books for accounting purposes.

Advance Ruling Summary No 13/2021 Published on 1 September 2021 – Exchange Fee falls within the definition of "break cost" under s 13(16). Therefore, subject to satisfying the governing conditions under the Income Tax (QDS) Regulations, ss 43N and 13(2F), where applicable:

i. Noteholders deriving the Exchange Fee will be entitled to tax exemptions and concessions available under ss 13(1)(ba) and 43N of the ITA, and individuals deriving such income (other than through a partnership in

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Singapore or from the carrying on of a trade, business or profession in Singapore) would be exempt from tax on such income under s 13(1)(zk) of the ITA, and

ii. The Exchange Fee will not be subject to withholding tax when paid by the Issuer to non-resident Noteholders under the QDS Scheme (See ¶13-610).

Advance Ruling Summary No 15/2021 Published on 1 October 2021 – Ruled Subordinated Perpetual Securities regarded as "debt securities" for the purpose of s 43N(4) and reg 2 of the QDS Regulations.

Distributions (including Optional Distributions) payable on the Securities will be regarded as interest payable on indebtedness and will enjoy the tax concessions and exemptions available for QDS provided that the other requisite conditions for the Securities to be QDS are satisfied.

Deductibility of the Distributions (including Optional Distributions) is subject to a detailed examination of the use of the proceeds from the issuance of the Securities. The Issuer will be allowed a tax deduction under s 14(1)(a) on the Distributions (including Optional Distribution) if such Distributions are incurred on capital (raised through the issuance of the Securities) employed in acquiring the income of the Issuer that is chargeable to tax. This is on the condition that all the requirements under s 14(1)(a) are met and the deduction is not prohibited under any other provisions of the ITA.

Distributions (including Optional Distribution) will be deductible only when they are legally due and payable and not based on their scheduled Distribution Payment Dates.

Key features of the Securities:

i. The Securities confer a right to the holders of the Securities ("Securityholders") to receive fixed rate distributions ("Distributions"), payable semi-annually in arrear (each a "Distribution Payment Date").

ii. The Issuer may, at its sole discretion, elect not to pay a Distribution (or to pay only part of a Distribution) scheduled to be paid on a Distribution Payment Date by complying with certain notice requirements. Distributions that are deferred are non-cumulative and do not accrue interest.

iii. The Issuer may, at its sole discretion, and at any time, elect to pay an amount up to the amount of Distribution which is unpaid ("Optional Distribution") (in whole or in part) by complying with certain notice requirements.

iv. Subject to certain exceptions, if the payments of Distributions scheduled to be made are not made in full by reason of the exercise of the Issuer's discretion, the Issuer and the subsidiaries of the REIT are not allowed to pay any dividends, distributions or make any other payment on, or redeem, reduce, cancel, buy-back or acquire for any consideration in respect of, any of the Issuer's junior obligations or (except on a pro-rata basis) parity obligations, unless and until either a redemption of all the outstanding Securities has occurred, the next scheduled Distribution has