

Taxation on Gains from Sale of Foreign Assets in Singapore (Companies)

M2K Singapore Alert



Foreign-sourced Disposal Gain



Prior to 2024, Singapore did not tax gains from the sale or disposal of assets that are capital in nature, whether they are foreign-sourced or Singapore-sourced.

However, effective from 01 Jan 2024, gains from sale or disposal of foreign assets* received in Singapore from outside Singapore by a covered entity (refer Slide 3) would be treated as taxable income under section 10(1)(g) of the Income Tax Act 1947, Singapore ("ITA") under either of the following conditions:

- a) If the gains are not subject to taxation according to section 10(1) of the ITA.
- b) If the gains are exempt from taxation under the ITA.

Such gains are referred to as **Foreign-sourced disposal gains**.

*Any movable or immovable property situated outside Singapore

Taxation of Foreign-sourced Disposal Gain

The foreign-sourced disposal gains will be subject to tax if the entity **does not have adequate** economic substance in Singapore **or** the gains are from the disposal of a foreign IPR, **and** the sale or disposal of the foreign asset occurs **on or after** 1 January 2024.*

Generally, such gains are deemed to be received in Singapore only if they belong to an entity that is located in Singapore. Consequently, foreign entities (i.e., not incorporated, registered or established in Singapore) that do not operate within or from Singapore fall outside the purview of section 10L of the ITA.



**Therefore, if the disposal of foreign asset takes place before 01 Jan 2024, and the disposal gains are received in Singapore on or after 01 Jan 2024, such gains will not be subject to tax in Singapore.*

Deductions for Income Tax



- Any expenditure incurred to finance the acquisition, creation, and improvement of the foreign asset or any loss incurred by the entity from the sale or disposal of any other foreign asset shall be **allowed as deduction** to ascertain the amount of gains from the sale or disposal of foreign assets.
- However, any expenditure that has been allowed a deduction **against any other income**, whether or not such income is chargeable or exempt from tax, **shall not be considered deductible** under this section.
- Where not all the gains from the sale or disposal of a foreign asset **are received in Singapore** in the same basis period, **a portion of such deductible amount** as the Comptroller of Income Tax (“Comptroller”) considers reasonable is deductible for each basis period in which any such gains are received in Singapore.
- A Singapore tax resident entity may claim double taxation relief, unilateral tax credit, or elect for the foreign tax credit pooling system when claiming the foreign tax credit to alleviate the foreign tax suffered on the foreign sourced disposal gains. The foreign tax credit may be claimed **within four years after the year of remittance**.

Definitions

Covered Entities

Covered entities refers to entities falling under the purview of relevant groups.

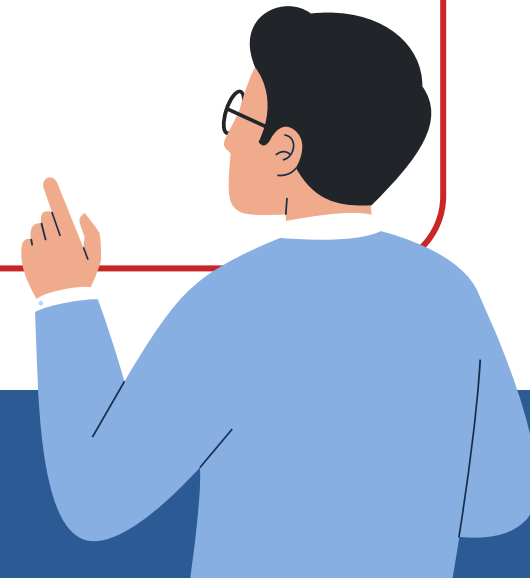
A relevant group* **does not include** a group comprising solely Singapore entities operating exclusively within Singapore. However, if any entity within the group has a place of business (such as a branch or permanent establishment) in a foreign jurisdiction, the entire group is deemed a relevant group for the context of section 10L of the ITA.

Covered Income

General scenarios of assets that are covered under this section (situated outside Singapore) are as follows:

- a) immovable property is situated outside Singapore;
- b) equity securities and debt securities are registered in a foreign exchange;
- c) unlisted shares are issued by a company incorporated outside Singapore;
- d) loans where the creditor is a resident in a jurisdiction outside Singapore;
- e) IPRs where the owner is a resident in a jurisdiction outside Singapore

*An entity is part of a group if its financials are either consolidated by the parent entity or excluded from consolidation solely based on size, materiality grounds, or on grounds that it's being held for sale.



Economic Substance Requirement (ESR)



It shall be noted that the economic substance requirement shall not be applied at a jurisdictional level for a group but will be assessed at the entity level, except under certain specified scenarios. The below table illustrates determination of the same based on nature of entity.

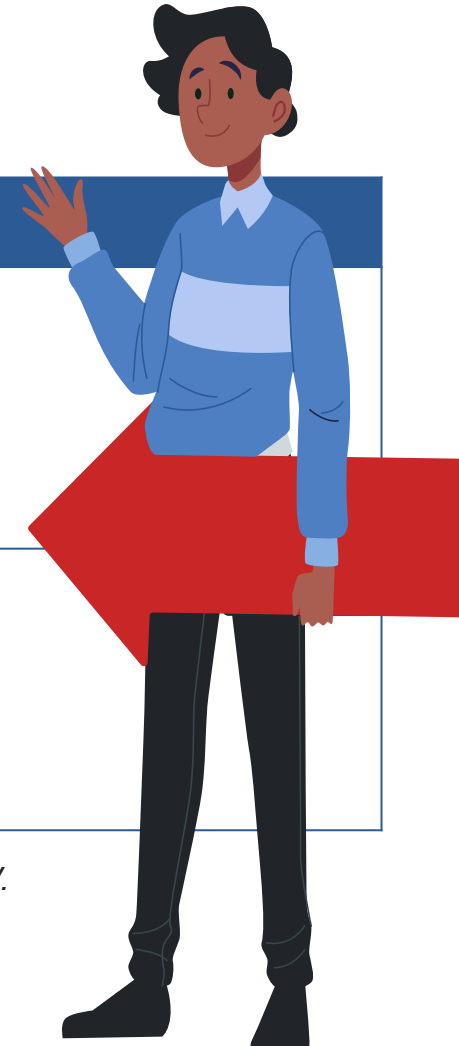
Nature of entity	Economic Substance Criteria
<p><u>A pure equity-holding</u> – An entity whose primary function is to hold shares or equity interests in other entities and derives income only in the following forms:</p> <p>(i) dividends or similar payments from shares or equity interests, (ii) gains from sale or disposal of shares or equity interests (iii) income incidental to the activities of holding shares or equity interests</p>	<ul style="list-style-type: none"> • The entity complies with every obligation to submit any regular return, statement, or account under the written law under which it is incorporated or registered; and • The operations of the entity are managed and performed in Singapore (whether by its employees or other persons) • The entity has adequate human resources and premises in Singapore to carry out the operations of the entity.
<p><u>An entity that is not a pure equity-holding entity</u></p>	<ul style="list-style-type: none"> • The operations of the entity are managed and performed in Singapore (whether by its employees or outsourced to third parties or group entities); and • The entity has reasonable economic substance in Singapore, taking into account the following considerations: <ul style="list-style-type: none"> ○ The no of full-time employees of the entity (or other person managing or performing the entity’s operations) in Singapore ○ The qualifications and experience of such employees in Singapore. ○ The amount of business expenditure incurred by the entity in Singapore and outside Singapore relative to the amount of the entity’s income. ○ Whether the key business decisions of the entity are made by persons in Singapore

ESR for Special Purpose Vehicles (SPVs)

A SPV is typically formed to ring-fence the risks of investments and does not have headcount or significant expenditure residing within the SPV. Therefore, if the immediate holding entity meet the following criteria it will not be considered a service provider of the SPV but will be the entity to be subject to the economic substance requirement.

SNo	Criteria
1	If the immediate holding entity: a) has effective control over the SPV; b) derives economic benefits from the activities carried out by the SPV; and c) defines the core investment strategies that the SPV implements,
2	If the immediate holding entity is also an SPV and another intermediate holding entity/ ultimate holding entity*: a) has effective control over the SPV (including the immediate holding entity of the SPV if any); b) derives economic benefits from the activities carried out by the SPV; and c) defines the core investment strategies that the SPV implements, the relevant intermediate holding entity/ ultimate holding entity would be subject to the economic substance requirement.

**The economic substance requirement can be tested on the ultimate holding entity only if the intermediate holding entity below it is also a SPV.*



Exclusions / Exemptions under Section 10L

Section 10L of the ITA will not apply to gains from the sale or disposal of a foreign asset (not being a foreign IPR) when it is:

01

Carried out as part of, or incidental to, the business activities of

- a bank licensed under the Banking Act 1970
- a merchant bank licensed under the Banking Act 1970
- a finance company licensed under the Finance Companies Act 1967
- an insurer licensed or regulated under the Insurance Act 1966 or
- a holder of a capital markets services licence under the Securities and Futures Act 2001

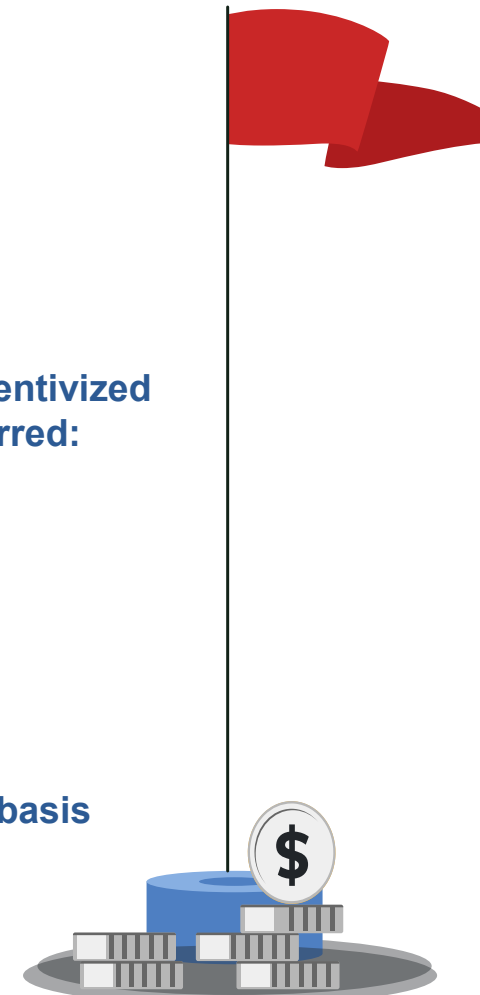
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Carried out as part of, or incidental to, the business activities or operations of an entity which are incentivized under the following tax incentives in Singapore in the basis period in which the sale or disposal occurred:


- Aircraft Leasing Scheme
- Development and Expansion Incentive
- Finance and Treasury Centre Incentive
- Financial Sector Incentive
- Global Trader Programme
- Insurance Business Development Incentive
- Maritime Sector Incentive
- Pioneer Certificate Incentive

03

Carried out by an entity that is able to meet the economic substance requirement in Singapore in the basis period in which the sale or disposal occurred.



Taxation of Foreign IPRs



The tax treatment of gains from the sale or disposal of **foreign IPRs is different from that of other foreign assets**. For gains from the sale or disposal of qualifying foreign IPRs* (as defined in section 43X of the ITA), a modified nexus approach** is used to determine the **extent of such gains that will not be taxable** when received in Singapore.

For non-qualifying foreign IPRs, the **full amount** of the gains from the sale or disposal of the IPRs **will be subject to tax** when such gains are received in Singapore. This is regardless of whether the entity has adequate economic substance in Singapore.

*Qualifying IPR refers to the following: a) any patent under the Patents Act 1994 or the equivalent law of any country or territory; b) an application for a patent under the Patents Act 1994 or the equivalent law of any country or territory; c) any copyright subsisting in software by virtue of the Copyright Act 2021 or the equivalent law of any country or territory,

**The modified nexus approach is an international standard set by the Organisation for Economic Co-operation and Development (“OECD”), which permits jurisdictions to provide tax benefits to the income arising out of a qualifying IPR, so long as there is a direct nexus between the income receiving benefits and expenditures contributing to that income

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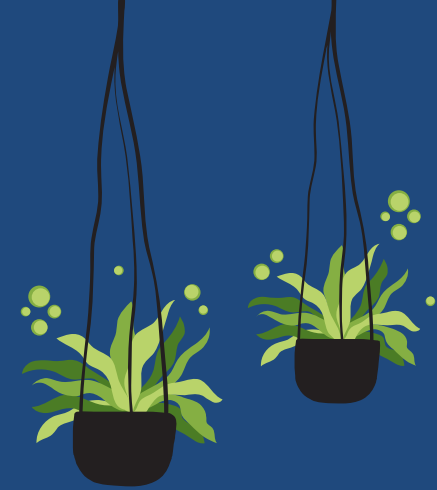
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