

# Decoding Singapore's New Tax regime on Sale of Foreign Assets



# Introduction to new tax regime



Up to 31 Dec 2023, gains from the sale or disposal of assets that are capital in nature, whether they are foreign-sourced or Singapore-sourced, are not taxable in Singapore.

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 14) 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*

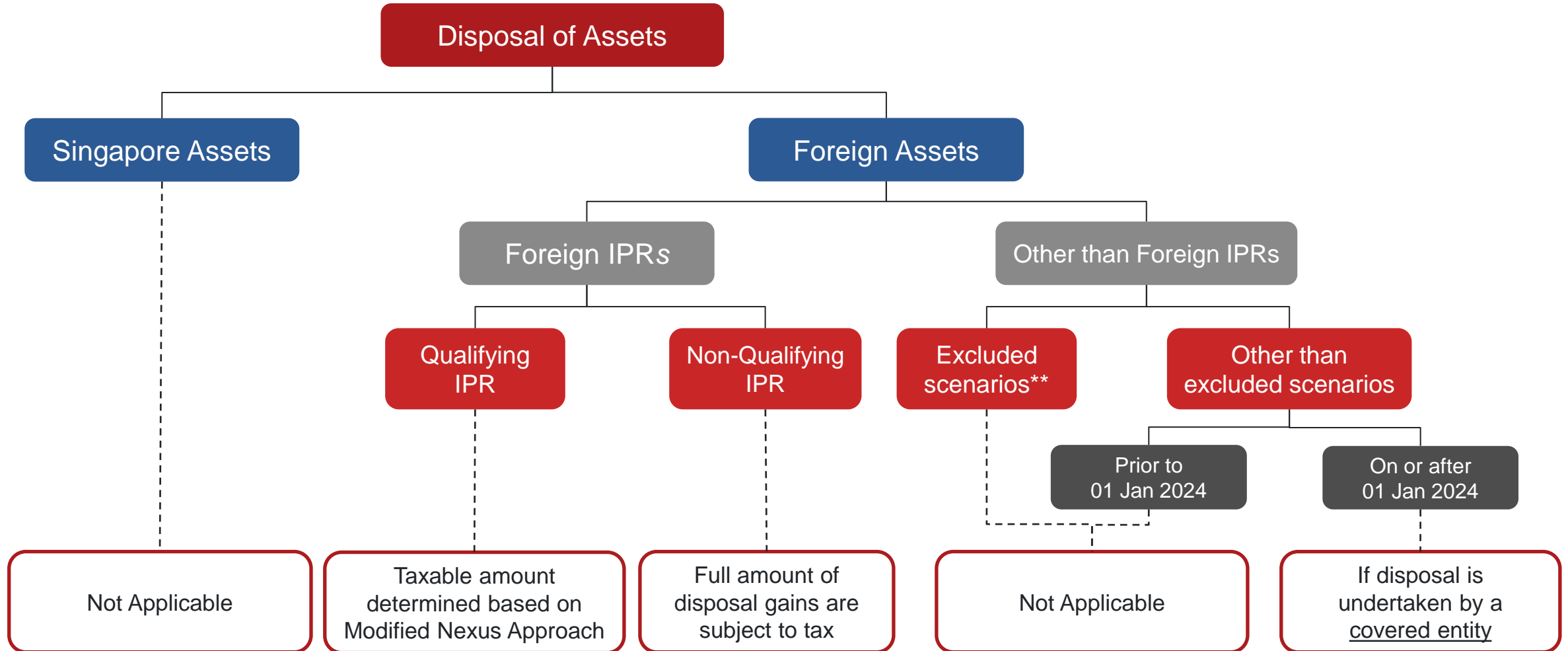
# Taxation of Foreign-sourced Disposal Gain

- The foreign-sourced disposal gains will be subject to tax (at the time of receipt in Singapore) under the below-scenarios:
  - a) The sale or disposal of the foreign asset occurs **on or after** 1 January 2024\* and;
  - b) If the entity **doesn't** fall under **specified business activities / covered under specified tax incentives**
  - c) In case of foreign assets (other than Intellectual Property Rights ('IPRs')), if the entity **does not have adequate** economic substance in Singapore
- 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.
- Refer the **illustration at Slide 4** for ease of clarity on applicability of Section 10L



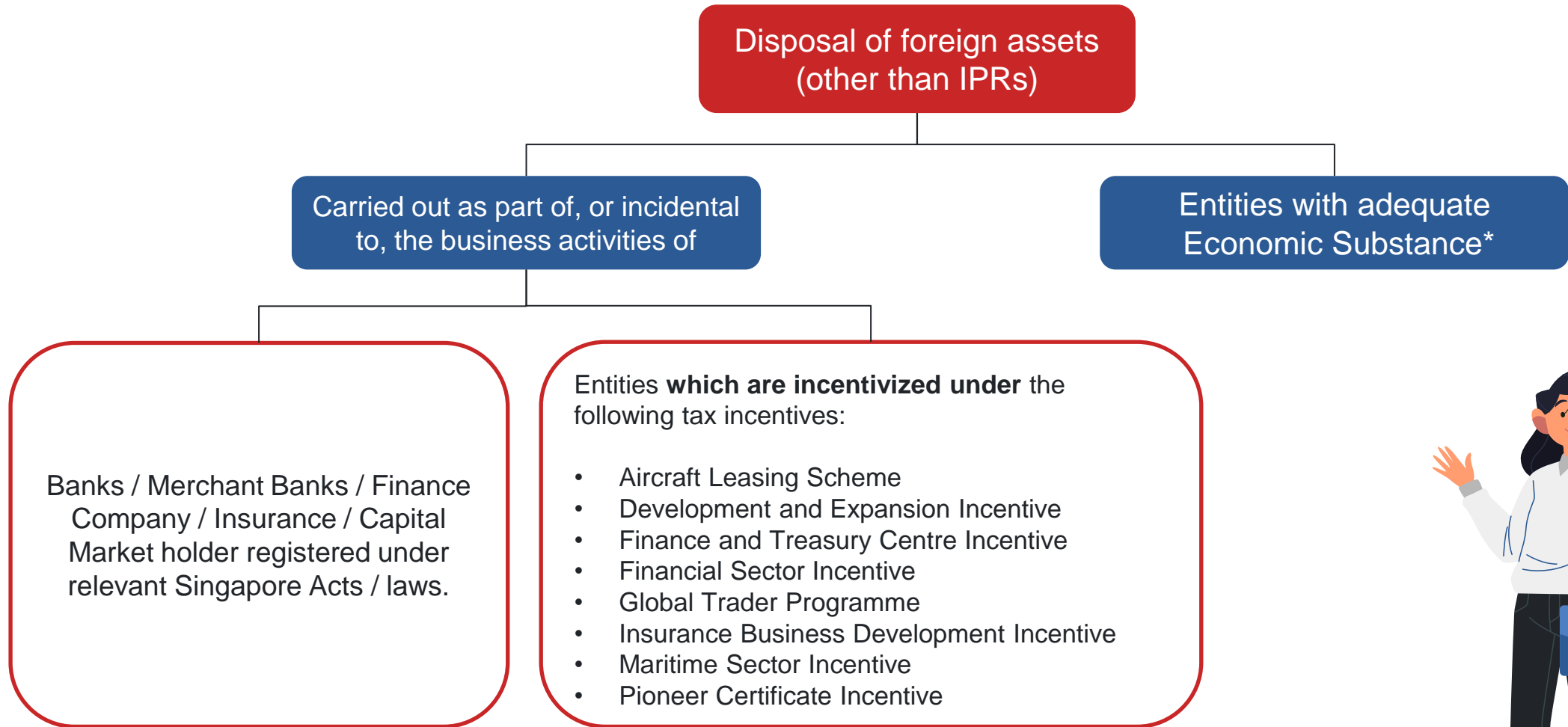
*\*Therefore, if the disposal of foreign asset takes place before 01 Jan 2024, and the disposal gains are received in Singapore on or after 01 Jan 2024, such gains will not be subject to tax in Singapore.*

# Applicability of Section 10L (Companies)



\*\* Refer [Slide 5](#) for scenarios under which tax on gains from foreign assets (other than IPRs) are excluded / exempted

# Excluded Scenarios under Section 10L



*\*Economic substance requirement must be determined at the entity level based on nature of entity (i.e., pure equity holding entity, other than pure equity holding entity or a Special Purpose Vehicle (SPVs), etc)*

# Economic Substance Requirement (ESR)

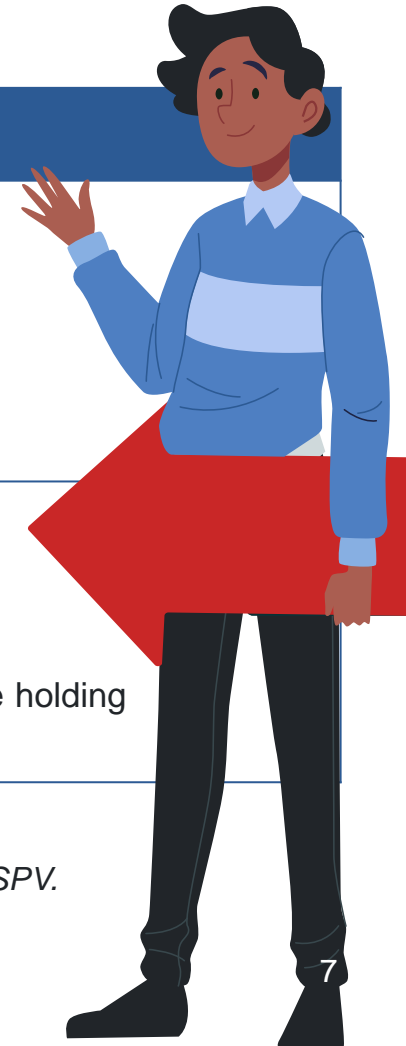
It shall be noted that the economic substance requirement shall not be applied at a jurisdictional level for a group but will be assessed at the entity level, except under certain specified scenarios ([Refer Slide 7](#)). The below table illustrates determination of the same based on nature of entity.

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"> <li>• 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</li> <li>• The operations of the entity are managed and performed in Singapore (whether by its employees or other persons)</li> <li>• The entity has adequate human resources and premises in Singapore to carry out the operations of the entity.</li> </ul>
<p><u>An entity that is not a pure equity-holding entity</u></p>	<ul style="list-style-type: none"> <li>• The operations of the entity are managed and performed in Singapore (whether by its employees or <b>outsourced to third parties</b> (<a href="#">Refer slide 8</a>) or group entities); and</li> <li>• The entity has reasonable economic substance in Singapore, taking into account the following considerations:                             <ul style="list-style-type: none"> <li>○ The number of full-time employees of the entity (or other person managing or performing the entity’s operations) in Singapore</li> <li>○ The qualifications and experience of such employees in Singapore.</li> <li>○ The amount of business expenditure incurred by the entity in Singapore and outside Singapore relative to the amount of the entity’s income.</li> <li>○ Whether the key business decisions of the entity are made by persons in Singapore</li> </ul> </li> </ul>

# 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.

S No	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.

# Outsourcing of Economic Activities

The economic substance requirement takes into account outsourcing arrangements where an entity outsources some or all of its economic activities to third parties or group entities. For an outsourcing arrangement to satisfy the economic substance requirement, the following conditions must be satisfied:

- a) the economic activities are to be carried out by the outsourced entity **in Singapore**;
- b) the outsourcing entity **has a direct and effective control over the outsourced activities** carried out by the outsourced entity on its behalf and
- c) the outsourced entity providing the outsourced services **must set aside dedicated resources** (e.g., manhours) to provide the outsourced services.

***Note:** When determining whether the outsourcing entity is able to satisfy the economic substance requirement in respect of its economic activities, the resources of the outsourced entity in Singapore will be considered. The outsourced entity can provide support to more than one entity, provided that its resources are commensurate with the complexity and level of services it provides to other entities*





# 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 Organization 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

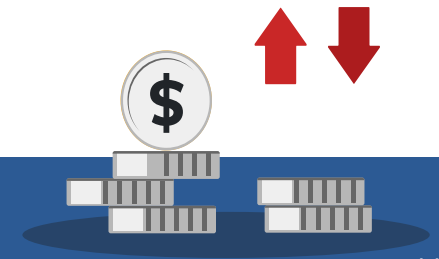
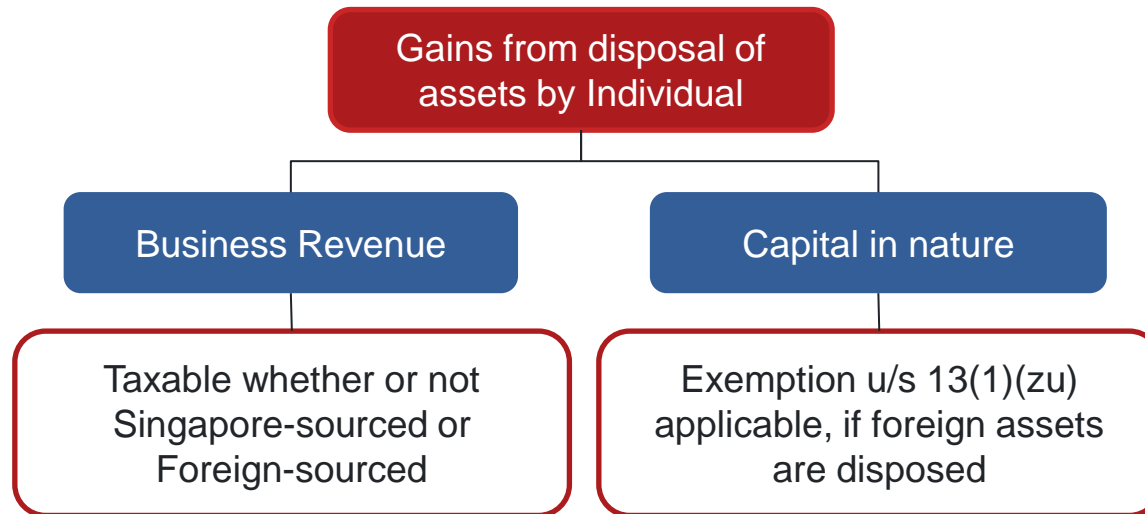
# Cost deduction for computing the capital gains



- 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**.

# Exemption on tax for Individuals

In certain instances, where the tax transparency treatment applies, such as when the covered entity in question is a partnership, the share of capital gains from the sale or disposal of a foreign asset **will be exempt from tax in the hands of an individual u/s 13(1)(zu) of the ITA**. However, the said tax exemption will not be given if the gains are **business revenue gains**.



# Advance Ruling for ESRs

Advance Ruling can be sought from IRAS to get a certainty of the tax position.

Application for advance ruling can be made to seek certainty on the adequacy of economic substance (“ESR AR applications”) when a proposed sale or disposal of foreign assets is expected to occur. This is provided that the proposed sale or disposal of foreign assets is envisaged to take place **within one year from the date of the application.**

The advance ruling on the adequacy of economic substance, if issued, **may be valid for up to five Year of Assessments (YAs)**, including the YA relating to the basis period in which the proposed sale or disposal of foreign assets is envisaged to take place. This means that the ruling may be applicable to the foreign-sourced disposal gains from any subsequent sale or disposal of foreign assets within the advance ruling validity period. \*

An advance ruling is final, and the taxpayer cannot appeal against the ruling i.e., there is no appeal process provided for in the ITA. It shall be noted that an advance ruling is generally provided within 4-6 weeks. However, if the application is complex, IRAS may ask for additional time. Initial application fee for ruling is SGD 660 (including GST). After the first four hours taken to provide the ruling, a further time-based fee of an hourly rate of SGD 165 per hour (including GST) shall be charged.

\*Provided that the relevant facts and representations made for the purpose of the ruling application remain unchanged and there is no change in the tax laws or our interpretation of the tax laws



# Annexures

# 1. Key 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.

## 2. Modified Nexus Approach for Qualifying IPRs

The definition of the “modified nexus ratio” is calculated in accordance with the following formula and is capped at 100%:

$$\text{Modified Nexus Ratio} = \frac{\text{QE} \times 130\%}{\text{QE} + \text{NE}}$$

**QE means the qualifying Research and Development (“R&D”) expenditure** incurred in respect of the qualifying IPR to which the qualifying IP income disposal gains relate. Qualifying R&D expenditure a) Direct R&D expenditure incurred by the entity on the qualifying IPR; b) Expenditure incurred for R&D carried out on behalf of the entity by (i) an unrelated party, or (ii) a Singapore resident related party in Singapore; and c) Payments made by the entity under a cost-sharing agreement (“CSA”) (except excluded CSAs) to carry out R&D.

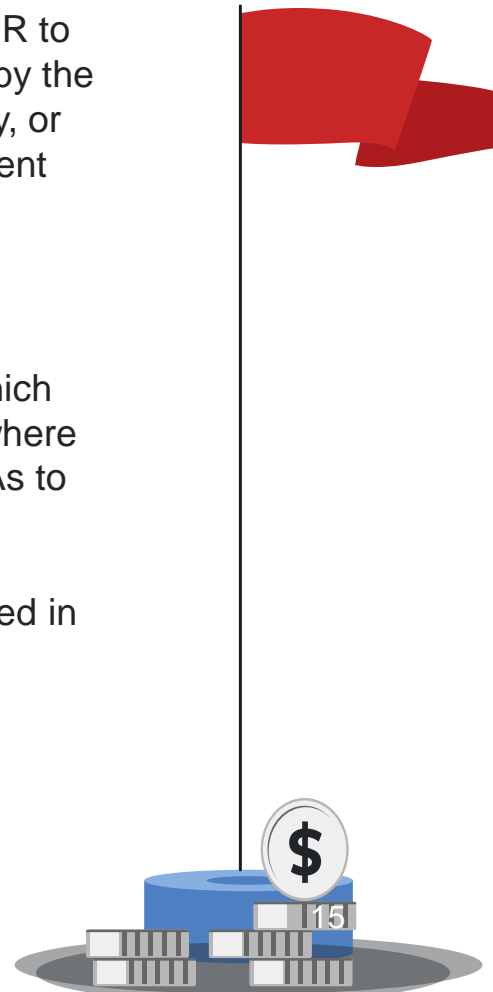
**NE means the non-qualifying expenditure** incurred in respect of the qualifying IPR. Non-qualifying expenditure a) Expenditure (including licensing fees) incurred or buy-in payments (made under CSA) to obtain a qualifying IPR on which the entity has carried out R&D; b) Expenditure incurred for R&D carried out on behalf of the entity by a related party, where the related party is a non-resident, or the R&D is carried out outside Singapore; and c) Payments under excluded CSAs to carry out R&D.

The modified nexus ratio is applied to calculate the portion of disposal gains that will not be subject to tax when received in Singapore by the entity, which is ascertained in accordance with the following formula:

$$\text{Gains not subject to tax} = \text{Disposal gains of qualifying IPR} \times \text{Modified Nexus Ratio}$$

Consequently, the gains subject to tax under section 10L is ascertained in accordance with the following formula:

$$\text{Gains subject to tax} = \text{Total gains} - \text{Gains not subject to tax}$$



### 3. Adjustment to Open-Market Price

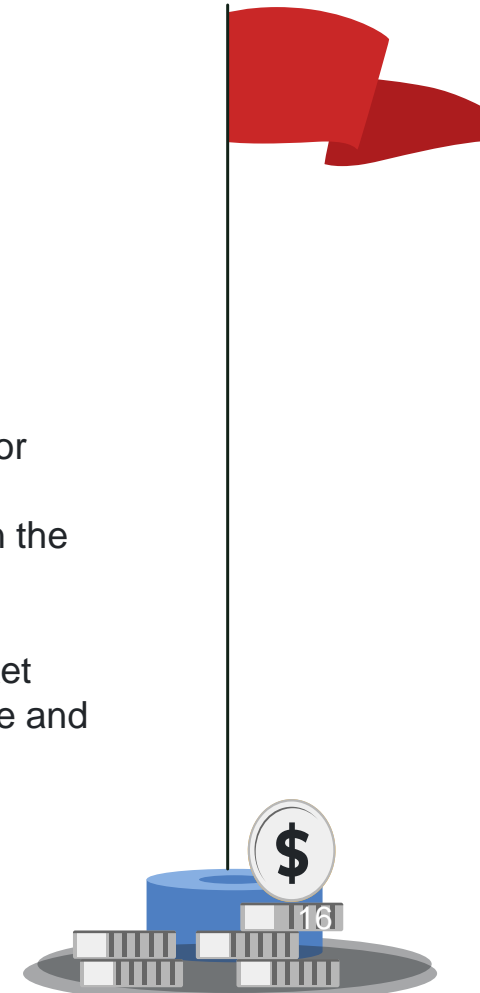
- Where the sale or disposal of a foreign asset by the entity was at a price less than the open-market price for the foreign asset, the Comptroller may treat the following amount as the amount of the gains received in Singapore:

$$A + B - C$$

where:

A is the amount of the gains actually received in Singapore;  
B is the open-market price for the foreign asset; and  
C is the actual price for the sale or disposal of the foreign asset.

- The open-market price for a foreign asset is either:
  - the price which the foreign asset could have been sold for in the open market on the date of its sale or disposal; or
  - where the Comptroller is satisfied by reason of the special nature of the foreign asset that it is not practicable to determine the price mentioned in paragraph (a), such other value as appears to the Comptroller to be reasonable in the circumstances.
- If no amount of the gain is received in Singapore, the Comptroller will not tax the difference between the open market price and the actual price of the foreign asset. The Comptroller will tax the difference between the open market price and the actual price of the foreign asset in the year when there is an amount of gain received in Singapore.





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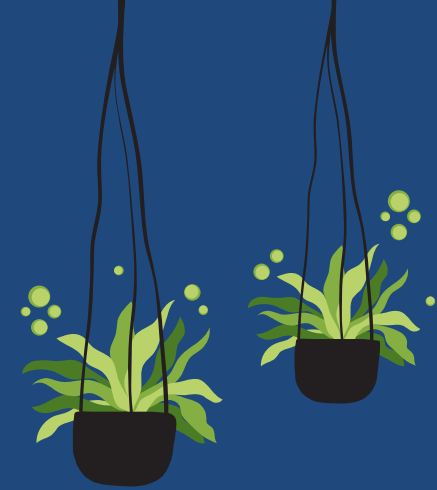
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