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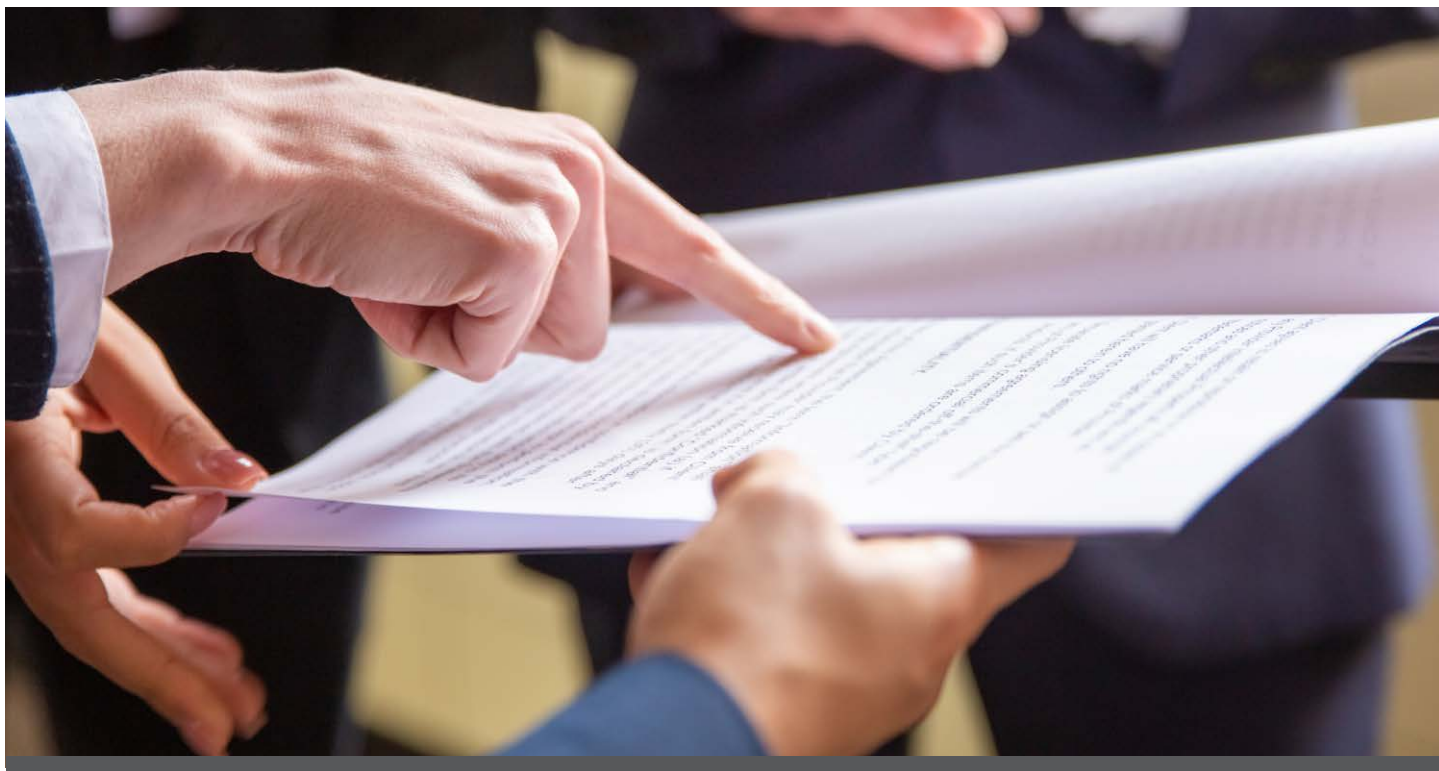
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Bulletin Highlights

- Singapore enacts Section 10L on Taxation of Gains from the Sale of Foreign Assets
- Impact of section 10L on Singapore as a holding company jurisdiction



Singapore enacts Section 10L on Taxation of Gains from the Sale of Foreign Assets

(compiled by N Vimala Devi)

To align with European Union laws and comply with international standards the following section 10L of the Singapore Income Tax Act has been introduced that will become effective from 1 Jan 2024. It allows the taxation of foreign disposal gains that are received in Singapore in the absence of real economic activities.

The article provides a technical analysis of the newly introduced section 10(L) of the Singapore Income Tax Act ("SITA"). In a nutshell, potentially an investment holding company of a multinational group set up in Singapore to hold foreign investments that cannot prove their economic substance would be subject to capital gains tax in Singapore. The capital gains tax will be assessed in the year of assessment when such gains are received in Singapore. The economic substance must be proven in the year when the foreign assets are sold. To mitigate the capital gains tax exposure on the divestment of foreign assets, the company must, at the minimum, maintain a Singapore office and submit its annual statutory returns along with some real human efforts in managing the operations from Singapore.

Section 10L(1) of SITA stipulates -

"Despite anything in this Act, gains from the sale or disposal by an entity (called in this section the seller entity) of a relevant group of any movable or immovable property situated outside Singapore at the time of such sale or disposal or any rights or interest thereof (called in this section a foreign asset), that are received in Singapore from outside Singapore, are treated as income chargeable to tax under section 10(1)(g) for the year of assessment relating to the basis period in which the gains are received in Singapore."

The Singapore government has passed the above section 10L legislation to apply from 1 Jan 2024 relating to the gains from the sale or disposal of a foreign asset.

The above law applies to a relevant entity which is part of a relevant group in which entities in the group are not all incorporated or established within a single jurisdiction, that is, in Singapore or any entity of the group has a place of business outside of Singapore. In other words, if one of the entities of the group has a place of business, such as a branch or a permanent establishment outside of Singapore, the group is considered a relevant group for the application of s10L purposes.

Please note that the section 10L provision does not apply to the following:

- a. prescribed financial institutions
- b. entities deriving income that is exempt under section 13A, 13E, 43C, 43E, 43I, 43L, 43N, 43Q, 43R or 43U
- c. entities deriving income that is exempt or taxed as a concessionary tax rate under the Economic Expansion Incentive (Relief from Income Tax) Act 1967
- d. entity that is an excluded entity

With reference to (d), an excluded entity refers to either a pure equity-holding entity (“**PEHE**”) or an entity that is not a pure-equity-holding entity (“**NPEHE**”). A PEHE means an entity whose function is to hold shares or equity interest in any other entity and that has no other income other than dividends, gains on the sale or disposal of shares or equity interests or income incidental to its activities of holding shares or equity interest in any other entity.

A PEHE is an excluded entity if -

- it submits statutory returns that are required under Singapore laws on a regular basis;
- its operations are managed and performed in Singapore subject to the direct and effective control of the entity, whether by its employees or by other persons, and
- it has adequate human resources and premises in Singapore to carry out the above operations.

An NPEHE is an excluded entity if –

- its operations are managed and performed in Singapore subject to the direct and effective control of the entity, whether by its employees or by other persons;
- it has **adequate economic substance** in Singapore, taking into account the following considerations:
 - the number of full-time employees of the entity or other persons managing or performing the entity’s operations in Singapore;
 - the qualifications and experience of such employees or other persons;
 - the amount of business expenditure incurred by the entity in relation to its operations in Singapore and
 - whether key business decisions of the entity are made by persons in Singapore.

Impact of section 10L on Singapore as a holding company jurisdiction

Singapore has been an attractive holding company jurisdiction on many fronts, including having a relatively low tax jurisdiction that only imposes tax on income, whereby capital gains are exempt from tax. The tax imposed on income is on a territorial basis; in other words, on income accrued in or derived from Singapore or received from outside Singapore. Capital gains were never subject to any tax, regardless of whether such gains were received in Singapore or not.

However, with the introduction of s10L, capital gains derived from the disposal or sale of foreign assets by a Singapore entity, which is part of a relevant multinational group, may potentially suffer capital gains tax if it does not qualify as an excluded entity.

The s10L may adversely impact a PEHE if it is set up in Singapore as a holding company having entities in the region if it does not qualify to be an excluded entity. One of the criteria to be an excluded entity requires some economic substance, which has been defined to include its operations carried out in Singapore, including premises more than a registered office address provided by a professional corporate secretarial firm.

A PEHE should meet the adequate premises criterion if –

- i. it has an office in Singapore for the use of its employees (including rented premises or co-working office space.
- ii. it shares a premise with an associated entity for the use of its employee(s) or
- iii. the outsourced service provider performing the PEHE’s core income-generating activity has an office in Singapore.

The economic substance as laid out above should be met in the year of disposal of the foreign asset. Therefore, a PEHE should maintain a Singapore premise and have employee(s) working in Singapore or outsource its business activities to a service provider to prove economic substance to qualify to be an excluded entity, to exempt from tax its capital gain that is received in Singapore from the disposal of foreign assets.

To provide certainty, in anticipation of a proposed sale of foreign assets, the taxpayer can apply for an advance ruling on the adequacy of its economic substance. The advance ruling application must be made, provided the disposal of the foreign assets is to take place within one year from the date of application.

As this is relatively new legislation, there should be further clarity, guidance and assistance provided by the Inland Revenue Authority of Singapore as they continue to fine-tune and implement s10L.

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Writers' Caveat

These articles have merely attempted to provide a broad overview on the subject matters. They are not in any way intended to be comprehensive and no specific action should be taken on the basis of the above without consulting your professional advisors.