



## **CERTAINTY OF NON-TAXATION OF COMPANIES' GAINS ON DISPOSAL OF EQUITY INVESTMENTS**

(compiled by Andy Foo)

In his 2012 Budget, the Minister for Finance announced that certainty of non-taxation will be given on gains derived by a company from the disposal of equity investments that meet certain conditions. The certainty of non-taxation rule aims at providing upfront tax certainty for certain disposals by companies of their equity investments.

The Inland Revenue Authority of Singapore ("IRAS") has issued guidelines on the application of the certainty of non-taxation rule in its circular entitled "*Income Tax: Certainty of Non-taxation of Companies' Gains on Disposal of Equity Investments*" on 30 May 2012.

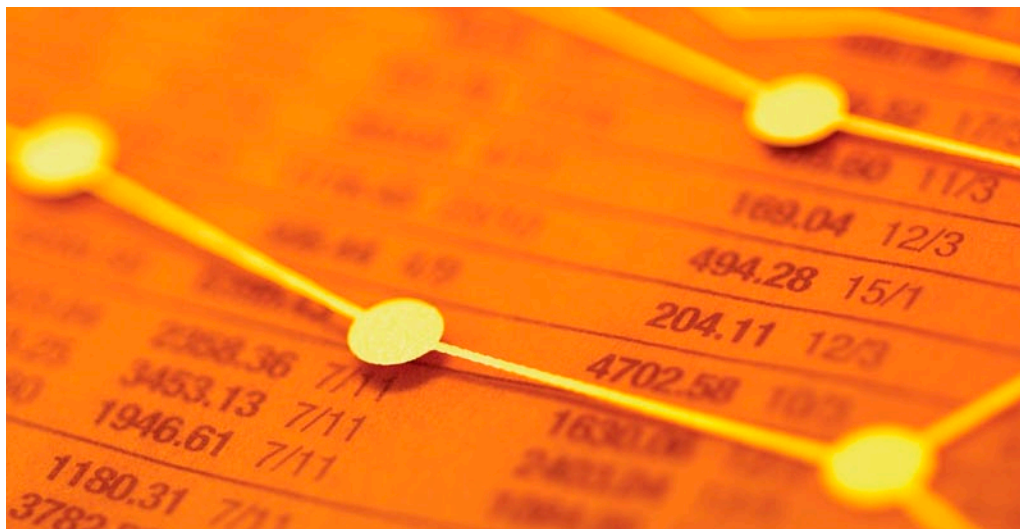
This article briefly summarises the qualifying conditions and scope of the certainty of non-taxation rule.

## Current Tax Treatment

Singapore does not impose tax on capital gains but imposes tax on gains that are regarded as revenue or income in nature. The determination of whether the gains from disposal of equity investments are income or capital in nature is based on a consideration of the facts and circumstances of each case. The factors considered are commonly referred to as the “badges of trade” tests and they include motive of seller, length of period of ownership, frequency of similar transactions, reasons for the disposal and means of financing the acquisition of the equity investments.

There has always been uncertainty among taxpayers as to whether the gains from disposal of equity investments would be accepted by the IRAS as capital in nature (and thus non-taxable) or revenue / income in nature (and thus taxable).

The certainty of Non-Taxation Rule is therefore a welcomed initiative at providing taxpayers with upfront tax certainty on their gains from disposal of equity investments.



## Certainty of Non-Taxation Rule

### Qualifying Conditions

The certainty of Non-Taxation Rule provides that gains derived by a divesting company from its disposal of ordinary shares in an investee company are **not taxable** if immediately prior to the date of the disposal, the divesting company has held at least 20% of the ordinary shares in the investee company for a continuous period of at least 24 months. This means that for every day of the 24 months, the divesting company must maintain a minimum ordinary shareholding level of at least 20% in the investee company whose ordinary shares are being disposed of.

The certainty of Non-Taxation Rule does not apply to a disposal of shares of a preferential nature or shares with redeemable or convertible features.

### Scope of the Rule

The certainty of Non-Taxation Rule is applicable whether the investee company is incorporated in Singapore or elsewhere. The investee company can also be a listed (in Singapore or elsewhere) or non-listed company. However, the certainty of Non-Taxation Rule does not apply to-

- (a) a **divesting company** whose gains or profits from the disposal of shares are included as part of its income as an insurer; and
- (b) disposals of shares in an unlisted **investee company** that is in the business of trading or holding Singapore immovable properties (other than the business of property development).

### Effective Date

The certainty of Non-Taxation Rule is applicable to gains derived by a divesting company from its disposal of ordinary shares in an investee company during the period 1 June 2012 to 31 May 2017 (both dates inclusive). The qualifying period will be reviewed at the end of five years.



## **Situations Where Normal Tax Rules Continue to Apply in Determining Nature of Gains or Losses from Disposals of Equity Investments**

The IRAS has clarified that the tax treatment of gains or losses from disposal of equity investments will continue to be determined based on normal tax rules in the following situations –

- (i) where a divesting company has held at least 20% of the ordinary shares in an investee company for a continuous period of at least 24 months (i.e. it meets the condition under the certainty of Non-Taxation Rule) but incurs losses from the disposal of ordinary shares in the investee company. In such a case, the losses are not immediately disregarded;
- (ii) where a divesting company derives gains from the disposal of ordinary shares in an investee company and the disposal does not meet the condition under the certainty of Non-Taxation Rule. In such an instance, the gain is not automatically subject to tax;
- (iii) where a divesting company makes gains or losses from the disposal of non-ordinary shares in an investee company.

Therefore, whether the gains or losses from the disposal of equity investments in the above situations are income or capital in nature will continue to be determined based on the usual tax rules and facts and circumstances of each case.

## **Administrative Procedures**

To avail of the certainty of Non-Taxation Rule, a company must complete the requisite information in its income tax return for the Year of Assessment relating to the basis period in which the disposal of ordinary shares is made. The company must also keep sufficient documents to substantiate that the conditions under the certainty of Non-Taxation Rule are met and provide these to the IRAS upon request.

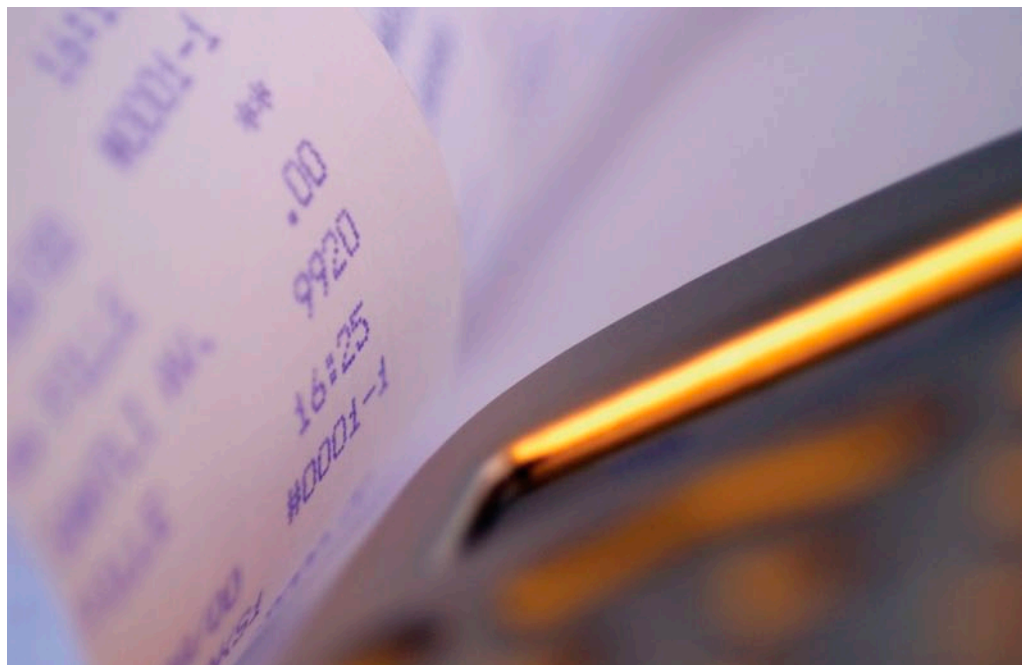
The IRAS has clarified that where a company does not complete the requisite information in its income tax return to avail itself of the certainty of Non-Taxation Rule, the IRAS will continue to apply normal tax rules to establish the nature of gains or profits from the disposal of ordinary shares.

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## "WHAT ARE THE STATUTORY REQUIREMENTS FOR GST REGISTRATION?"

(compiled by Faustina Lim)

Individuals are required to **continually assess** whether their business needs to be registered for GST compulsorily.

It is compulsory for businesses to register for GST when their turnover exceeds \$1 million per year. GST registration is optional if the turnover of the business do not exceed \$1 million.

The same rules above also apply to an overseas entity that is not a resident in Singapore and/or does not have an established place of business in Singapore.

The turnover of the business refers to the total value of all taxable supplies made in Singapore in the course or furtherance of business, including local sales of goods and services, export sales and provision of international services excluding the following:

- (1) Sales and leases of residential property (exempt supplies)
- (2) Supplies of financial services (exempt supplies)
- (3) Out-of-scope supplies\*

*\*Out-of-scope supplies mainly refer to sales for goods which did not enter Singapore and goods in transit.*

### Compulsory GST registration

In most cases, registering for GST is compulsory when:

- the taxable turnover for the past 4 quarters\* is more than \$1 million (unless you are certain that business turnover in the next 12 months will not exceed \$1 million); or
- the business is currently making sales and it is reasonably expected that the taxable turnover in the next 12 months will be more than \$1 million.

*\*Note: Business turnover for the past 4 quarters is determined at the end of any quarter and consist of the total value of your turnover in that quarter and the previous 3 quarters. Quarter refers to a period of 3 months ending on the last day of March, June, September or December.*

If your situation is either of the above, you need to apply for GST registration within 30 days of the date which your registration liability arises.

In the case of an overseas entity, the entity must appoint a local agent in Singapore (known as a section 33(1) agent) who will act on their behalf for all GST matters. This agent is responsible for the accounting and payment of GST. In addition, the entity needs to provide a letter to appoint a local agent.



## Voluntary GST registration

The benefit of registering for GST is that you can claim the GST incurred on your purchases, subject to the conditions for claiming input tax. Registering for GST voluntarily means that you need not monitor your turnover constantly if your turnover is near but below the S\$1 million threshold for compulsory registration.

The business may choose to apply for GST registration on voluntary basis if **any** of the following is satisfied.

- The business makes taxable supplies.
- The business makes only out-of-scope supplies.
- The business makes exempt supplies of financial services that are also international services.

The Comptroller may allow the business to register voluntarily even though the business **have not started making any supplies** but the business **must be carrying on a business** and **have the intention to make any of the above types of supplies** at the point of registration. However, should the intention fail to materialise and the Comptroller is not satisfied that the business has firm intention to make taxable supplies from the date of registration, the input tax previously claimed following your GST registration may be withdrawn.

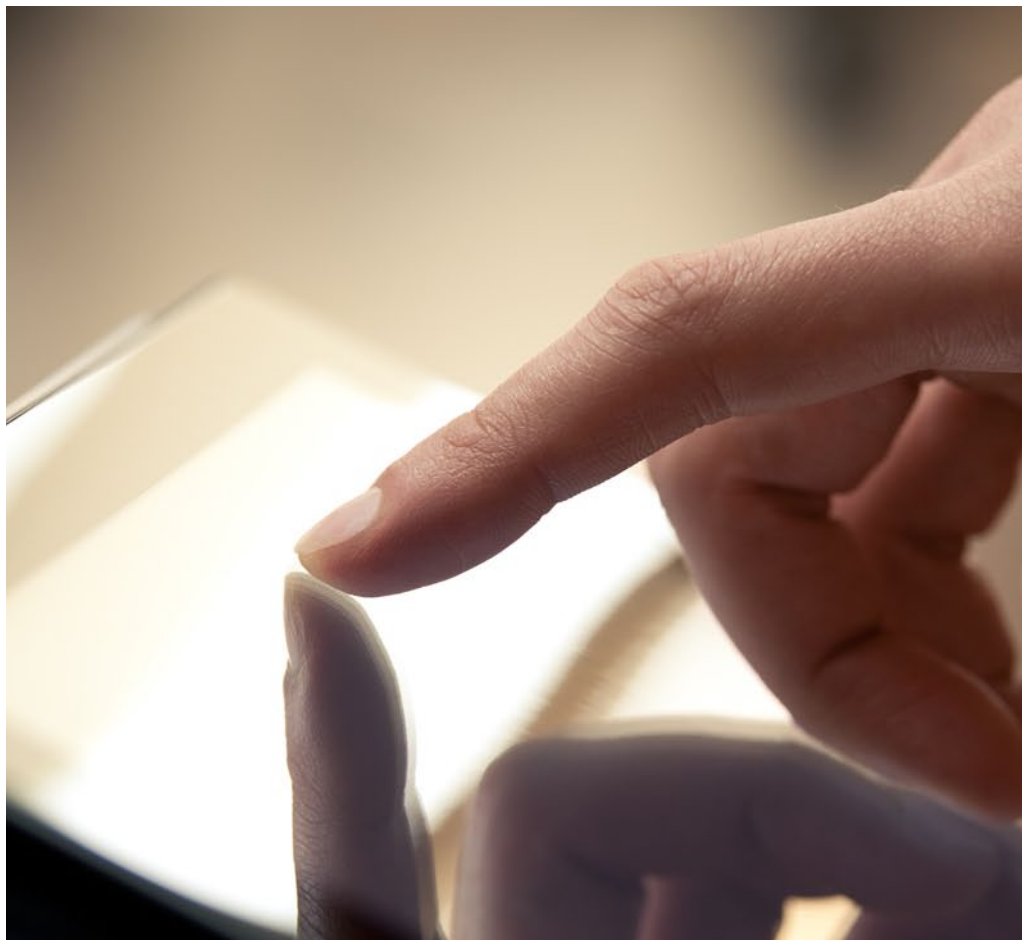
Before registering for GST, the business must consider the cost against the benefits of being GST registered since a voluntarily registered business needs to remain registered for two years. In addition, the following conditions must be comply with:

- Make taxable supplies within 2 years from the date of registration
- Be on GIRO arrangement for GST payment and/or GST refunds
- In certain cases, IRAS would request for a “security deposit” to be furnished. The amount of the deposit is determined by IRAS.
- The director of the company/ sole-proprietor/ partner/ trustee has to complete the e-Learning course “GST-Before I Register” and its quiz before submitting the registration form.
- Complete IRAS course “Introduction to GST” within 3 months from the date of registration

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### Did You Know?

## REVISED XBRL FILING REQUIREMENTS

(compiled by Sian Wee Nee)

In order to further enhance the financial statements reporting process to meet and balance the needs of stakeholders in the global marketplace, the Accounting and Corporate Regulatory Authority (“ACRA”) will implement the revised eXtensible Business Reporting Language (“XBRL”) filing requirements around the **second quarter of 2013**.

Currently, companies have two filing options under the existing XBRL system:

1. Option 1 – Full XBRL
2. Option 2 – Partial XBRL

Under the revised filing requirements, Singapore incorporated companies which are either unlimited or limited by shares, will be required to file **a full set of financial statements in XBRL** according to a minimum tagging list within ACRA Taxonomy 2012. The minimum tagging list is a set of elements within the ACRA Taxonomy 2012 which companies are required to file if the information is available in the AGM financial statements.

Consequently, under the revised filing requirements, the option to file partial XBRL with ACRA will **no longer** be available.

ACRA will allow more time for filing only for the first year of new XBRL implementation. ACRA will not be imposing any penalty on companies, other than public listed companies, if the company is filing a full set of financial statements in XBRL under the following conditions:

- (a) For AGM held not more than one month after the prescribed period under Section 175 of the Companies Act, Cap 50 ; or
- (b) For delay in laying the financial statements before the shareholders not more than one month after the prescribed period under Section 201 of the Companies Act, Cap 50.

provided the Annual Return is filed within one month from the period so extended under (a) and (b).

A new XBRL preparation tool will be made available free of charge to enable companies to prepare a full set of financial statements in accordance with the revised XBRL filing requirements.

To familiarise companies with the use of the new preparation tool, ACRA will be rolling out a series of subsidized training seminars upon the launch of the new preparation tool and help guides will also be made available to provide ready reference to preparers on how to use the taxonomy and preparation tool to submit a proper set of financial statements in XBRL.

Please refer to the table for an illustration of the key enhancements:

| Description             | Existing XBRL System                                | Enhanced XBRL System  |
|-------------------------|---|---|
| Option 1 – Full XBRL    | ✓   | ✓<br>- The Company is required to file a <b>full set of financial statements in XBRL</b> according to a minimum tagging list within ACRA Taxonomy 2012.   |
| Option 2 – Partial XBRL | ✓   | ✗<br>- Will no longer be available  |
| Preparation Tool        | - Online preparation tool, available free of charge | - Offline preparation tool, available free of charge.<br>- The offline tool will facilitate conversion of financial statements in word / excel into XBRL. |
| Taxonomy                | - Approximately 500 data elements.                  | - Approximately 3,700 unique data elements, of which about 700 elements are in a new minimum tagging list.  |

For more information, please visit [www.acra.gov.sg](http://www.acra.gov.sg)

#### Writer's Caveat

These articles have merely attempted to provide a broad overview on the subject matters. It is 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.

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