

Feedback to MOF

**Public Consultation on
Proposed Income Tax (Amendment) Bill 2023**

Feedback on changes to Proposed Income Tax (Amendment) Bill 2023

Legislative Change	Section of the ITA	Corresponding Clause in Draft Income Tax (Amendment) Bill 2023	Proposed Change to Draft Income Tax (Amendment) Bill <i>[Please indicate your proposed change to the wording of the Bill. Leave blank if you are not proposing any change]</i>	Rationale for Proposed Change to Draft Income Tax (Amendment) Bill / General Comments
Tax gains from the sale of foreign assets that are received in Singapore by businesses without economic substance in Singapore.	S10L	Clause 6	<p>(6) Subsection (1) does not apply to gains from a sale or disposal of a foreign asset that is carried out —</p> <p>(a) by a financial institution (as defined in the Financial Services and Markets Act 2022) in the basis period in 30 which the sale or disposal occurred, <u>regardless whether the gain arises from a foreign asset classified under the tax exempt or concessionary tax rate categories;</u></p> <p>(b) by an entity whose income is exempt from tax, or is taxed at a concessionary rate of tax, under section 13A, 13E, 13P, 43C, 43E, 43I, 43J, 43L, 43N, 43P, 43Q, 43R or 43U of the Act for the basis period in which the sale or disposal occurred, <u>regardless whether the gain arises from a foreign asset classified under the tax exempt or concessionary tax rate categories;</u></p> <p>(c) by an entity whose income is exempt from tax, or is taxed at a concessionary rate of tax, under Part 2, 3 or 4 of the Economic Expansion Incentives (Relief from 5 Income Tax) Act 1967 for the basis period in which the sale or disposal occurred, <u>regardless whether the gain arises from a foreign asset classified under the tax exempt or concessionary tax rate categories;</u></p>	Since the objective of the legislative change is not meant to cover Companies with economic substance in Singapore, the exemption should apply so long as the Company qualifies for tax incentive; it should not matter whether the gain arise from a foreign asset classified under the normal tax category.

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Tax gains from the sale of foreign assets that are received in Singapore by businesses without economic substance in Singapore.	S10L	Clause 6	(8) For the purpose of subsection (1), where the sale or disposal of a foreign asset by a relevant entity <u>to a related party</u> was at a price less than the open-market price for the foreign asset, the Comptroller may, subject to the application of subsection (10), treat the <u>proportionate</u> open market price for the foreign asset as the amount of the gains received in Singapore from outside Singapore.	Transactions between independent parties will usually be reflective of open-market conditions (or there will usually be bona fide reasons for selling below an open-market price, e.g. in a distress sale), and therefore this is more likely to be relevant in transactions between related parties. In addition, the relevant entity may not have remitted the entire proceeds from the sale of the foreign asset into Singapore and as such, it would not be equitable to treat the full open market price as the amount of gains received in Singapore from outside Singapore. Instead, only the proportionate value should be regarded to be remitted and taxable in Singapore.

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Tax gains from the sale of foreign assets that are received in Singapore by businesses without economic substance in Singapore.	S10L	Clause 6	(12)(c) a ship or aircraft, or any right or interest in a ship or aircraft, is situated where the owner, or the person entitled to the right or interest (<u><i>e.g. lessee of a finance lease and purchase options</i></u>), is resident	To provide clarity and consistency that gains from the termination of lease by the lessee of the ship or aircraft under a finance lease and sale of purchase options would not fall within the scope of taxation where the lessee is a Singapore tax resident (i.e. not regarded as a foreign asset).
Tax gains from the sale of foreign assets that are received in Singapore by businesses without economic substance in Singapore.	S10L	Clause 6	(12)(d) any intangible movable property, and any right or interest in such property, that is not the subject of any paragraph in this subsection, is situated where the ownership rights in respect of the property would be primarily enforceable	To provide clarity on how to determine where it is primarily enforceable.

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Tax gains from the sale of foreign assets that are received in Singapore by businesses without economic substance in Singapore.	S10L	Clause 6	(14) "entity" definition	To exclude foreign permanent establishment of any legal person since the foreign permanent establishment would be separately taxed overseas.

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Tax gains from the sale of foreign assets that are received in Singapore by businesses without economic substance in Singapore.	S10L	Clause 6	(14) "excluded entity" definition and "economic substance conditions" <u><i>(iii) the entity has reasonable economic substance in Singapore, taking into account the following considerations: (A) business activities are carried out through staff with certain expertise (e.g. managing directors, chief financial officers, researchers in R&D, factory managers, etc); (B) incurred actual expenditure to carry out the activities; (C) whether the strategic decisions of the entity are made by persons employed or appointed by the relevant entity in Singapore;</i></u>	Suggest to replace with tax residency requirement for both pure equity-holding entity and not equity-holding entity (i.e. the Company will fulfil the requirement should it have a Certificate of Residence). Or to replace the economic substance conditions to that similar to substantive business conditions. The above suggestions will remove the administrative burden and cost of applying for an advance ruling to determine whether the conditions. Furthermore, whether the conditions are met may be regarded as a question of fact (i.e. does not qualify for ruling). This give companies more certainty on whether the gains will be taxable in Singapore. To provide clarity on what it means by "key business decisions". Does it relate to operational (i.e. day-to-day) decisions or strategic decisions during board meetings? Please also provide clarity and examples of when companies will be regarded as having met the conditions defined.

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Tax gains from the sale of foreign assets that are received in Singapore by businesses without economic substance in Singapore.	S10L	Clause 6	(14) "pure equity-holding entity" exemption	Would this exemption result in potential room for tax planning, where relevant one-off purchases of movable or immovable property situated outside Singapore are conducted through such pure equity-holding entities, with intention for future sale?
Tax gains from the sale of foreign assets that are received in Singapore by businesses without economic substance in Singapore.	S10L	Clause 6	Availability of foreign tax credit where the same gain is subject to tax overseas	To prevent subjecting companies to double taxation.

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Introduce the Enterprise Innovation Scheme (“EIS”).	S14ZG	Clause 22	Definition of qualifying training expenditureTo include definition of "course fee" as follows: <u>(5) "course fees" includes: (i) registration or enrolment fees;(ii) examination fees;(iii) tuition fees; and(iv) aptitude test fees.</u>	Suggest to include registration fees and any rental expenses for training venue for comprehensiveness. Suggest to include definition of course fees as per Section 14O for completeness.
Amendment of section 14B.	S14B	Clause 11	11. In the principal Act, in section 14B — (a) in the section heading, replace “or to maintenance of overseas trade office” with “, maintenance of overseas trade office, or electronic <u>marketplace</u> ”.	Suggest to change "electronic commerce" to "electronic marketplace" as electronic commerce is too broad and the intention is only to enhance deduction on expenses in relation to electronic marketplace.