

CHAPTER 28 SINGAPORE INCOME TAXATION

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SECTION 1 OVERVIEW

28.1.1 Income was taxed for ordinary revenue purposes in Singapore with the passage of the Income Tax Ordinance (No. 39 of 1947). The 1947 Ordinance was based largely on the Model Colonial Territories Income Tax Ordinance 1922, with the inclusion of several provisions from the UK Income Tax Act 1945. Many of these provisions are modeled heavily after comparable provisions of the income tax legislations of other Commonwealth jurisdictions, and can still be found in the present day Income Tax Act (Cap 134) ("ITA"). Therefore, many decisions of the English courts and courts of other Commonwealth jurisdictions may be of significant persuasive value even if not strictly binding on Singapore courts.

Charging Provision

28.1.2 Section 10(1) provides for income tax to be payable for each year of assessment ("YA") (which is based on the calendar year) upon the income of any person accruing in or derived from Singapore or received in Singapore from outside Singapore, only if such income falls within one of the enumerated heads of charge under section 10(1)(a) to (g). These heads of charge will be elaborated in Section 3 *infra*. Also, income is taxable only if it is sourced in Singapore, i.e. accruing in or derived from Singapore, or received in Singapore from outside Singapore, subject to variations. These source rules will be discussed in Section 4 *infra*. Only revenue (and not capital) receipts are taxable, and only revenue (and not capital) expenses are deductible for the purpose of computing the taxable income of a person. The distinction between income and capital receipts and expenses, as well as the various deductions and allowances for expenses, losses, reliefs and donations allowed under the ITA will be discussed in Section 5 *infra*.

Year of Assessment

28.1.3 Singapore adopts a preceding year basis of assessment, which means that tax for any given YA is paid on the income earned in the preceding calendar year or, in the case of a company, the financial year ending in the year preceding that

YA. For example, the basis period of a company with a financial year end of 30 June for YA 2010 is from 1 July 2008 to 30 June 2009.

Rates

28.1.4 The rate of tax applicable depends on the type of person whose income is under assessment. Different tax rates apply to residents and non-residents. In addition, the applicable tax rates differ for individuals, companies, bodies of persons¹ and other types of taxpayers. The rates for YA 2010 may be summarized as follows:

	Individual	Companies², Body of Persons, Trustees (other than trustees of incapacitated persons), Executors
Resident	First \$20,000 at 0% Subsequent amounts at marginal tax rate ranging from 3.5% to 20%	18%
Non-resident	<i>Employees: 15%</i> <i>Director's fees, consultation fees and all other incomes: 20%</i>	18%

28.1.5 In the case of a partnership (not a legal entity), section 36 provides that income is to be taxed in the hands of all the partners of that partnership on such share of the partnership profit to which each of those partners are entitled, as though it were income of a trade, business, profession or vocation carried on or exercised by that partner. Therefore, the share of partnership income of each partner is subject to tax at the marginal individual tax rate of that partner (or company tax rate in the case where that partner is a company). Similar see-through treatment applies to Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs) under sections 36A and 36C respectively, and therefore each partner in an LLP or LP will also be taxed on his share of partnership profits at his marginal individual tax rate or, where the partner is a company, at the prevailing company tax rate.

28.1.6 In the case of a trust, tax is usually payable by the trustee and distributions received by the beneficiaries are treated as after-tax receipts, by virtue of section 35(11) of the ITA. The only case where tax transparency will be accorded and tax payable by the beneficiary instead of the trustee is where the resident beneficiaries are entitled to the trust income under section 43(2), in which case the marginal tax rate of the beneficiary (or corporate tax rate if applicable) applies. Entitlement to trust income is a question of fact. However, as an administrative practice, the Comptroller regards a beneficiary, to whom trust income is distributed within the same year as that income is derived, as one who is "entitled to the income". Registered Business Trusts are treated for the purposes of the ITA as a company under section 36B.

28.1.7 Besides the prevailing rates aforementioned, there are numerous provisions in the ITA providing for concessionary rates of tax with respect to particular types of incentivized activities (sections 43A – 43ZD) and exemption of certain types of income arising from desirable activities (Part IV of the ITA and section 43C). Qualifying start-up companies are also exempt from tax and concessionary rate under section 43(6A).

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SECTION 2 RESIDENCE TESTS

28.2.1 For individuals, resident means “a person who, in the year preceding the year of assessment, resides in Singapore except for such temporary absences therefrom as may be reasonable and not inconsistent with a claim by such person to be resident in Singapore, and includes a person who is physically present or who exercises an employment (other than as a director of a company) in Singapore for 183 days or more during the year preceding the year of assessment”. See definition of “Resident of Singapore” in section 2(1) of the ITA. Broadly, there is a qualitative test, as well as two quantitative tests (physical presence test and employment test), embodied in the definition of “resident”, and satisfaction of any of these would be sufficient to establish an individual as a resident. The qualitative test depends on the meaning of the words “resides” and “temporary absence”. In *M Y v. Comptroller-General of Inland Revenue* [1972] 2 MLJ 110, the Malaysian Federal Court of Civil Appeal considered a number of factors to be relevant in determining the residence of the appellant taxpayer, including his substantial business connection with Malaysia, past history of residence, present habit and mode of life and the fact that the appellant taxpayer had a place for his stay in Malaysia reserved for his use at all times. It should also be noted that a person may have two residences where supported by facts. Per Lord Denning MR in *Fox v. Stirk*, [1970] 3 All ER 7.

28.2.2 In the case of a company or a body of persons, “resident” means one the control and management of whose business is exercised in Singapore. In *NB v. Comptroller of Income Tax* [2006] SGITBR 2, the Singapore Income Tax Board of Review (ITBR) took the view that the statutory “control and management” test is no different from that of the common law, which is captured in the oft-cited passage of Lord Chancellor Loreburn in *De Beers Consolidated Mines Ltd v. Howe* [1906] 5 TC 198:

We ought... to see where [a company] really can keep house and do business... The decision of Kelly CB and Huddleston B in Calcutta Jute Mills v. Nicholson and Cesena Sulphur Company v. Nicholson [1876] 35 LT 275; 1 Ex D 428... involved the principle that a company resides, for purposes of income tax, where its real business is carried on. Those decisions have been acted upon since. I regard that as the true rule; and the real business is carried on where the central management and control actually abides.

28.2.3 Where there is more than one decision-making body in a company, the management and control of the business of that company lies with the body holding the paramount authority on major questions of policy. See *American Thread Co. v. Joyce* (1913) 6 TC 163. The residence of a company is to be determined by its actual place of management, based on the actual circumstances of the company and not through the interpretation of the constitution or by-laws of the company. The management and control of a company generally lies with its board of directors. It may be usurped by an outsider, such as the holding company, where the company's board of directors stand aside from their directorial duties and do not purport to function as a board of management. See *Unit Construction Co. Ltd. v. Bullock* [1960] AC 351. However, the control and management of a company is not usurped by an outsider who instructs the board of directors on what to do, so long as the board exercises its discretion when making decisions and would have refused to carry out an improper or unwise transaction. See *Esquire Nominees Ltd v. Federal*

Commissioner of Taxation [1973] 129 CLR 177, Unigate Overseas Ltd v. McGregor [1996] STC (SCD) 1.

28.2.4 Other than for the purpose of determining the applicable tax rates, the tax residency of a taxpayer is also important as certain types of exemption are applicable depending on whether the taxpayer is resident in Singapore or not. Also, tax reliefs are available only to resident individuals.

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SECTION 3 HEADS OF CHARGE

28.3.1 The various heads of charge for which tax is imposed are enumerated in section 10(1):

- a. Section 10(1)(a): gains or profits from any trade, business, profession or vocation
- b. Section 10(1)(b): gains or profits from any employment
- c. Section 10(1)(d): dividends, interest or discounts
- d. Section 10(1)(e): any pension, charge or annuity
- e. Section 10(1)(f): rents, royalties, premiums and any other profits arising from property
- f. Section 10(1)(g): any other gains or profits of an income nature

Trade

28.3.2 There is no statutory definition of "trade". Judicial definitions have also been given sparingly. In *Ransom v. Higgs* [1974] 1 WLR 1594, Lord Reid held that the word "is commonly used to denote operations of a commercial character by which the trader provides to customers for reward some kind of goods or services". Lord Wilberforce noted that "[t]rade normally involves the exchange of goods or services for reward... there must be something which the trade offers to provide by way of business" and that "trade... presupposes a customer." Since there is no single satisfactory definition of trade, one has to consider the boundary lines in order to ascertain whether a transaction falls within the scope of a trade. The question of whether something is purchased for investment or for trade purposes is one of fact to be decided after taking into account all the surrounding circumstances. The test is an objective one. See *Ban Hin Leong v. Comptroller of Income Tax*, Income Appeal No. 7 of 1975.

28.3.3 The local courts have consistently followed the English courts in applying certain "badges of trade" in ascertaining whether a transaction may be classified as trade. The courts had adopted the six badges of trade listed in Paragraph 116 of the Final Report of the Royal Commission on the Taxation of Profits and Income Cmd. 9474 (1955) (commonly known as the Radcliffe Commission) as guidelines for ascertaining whether a transaction may be classified as trade. The Radcliffe Commission's six badges of trade are: (a) subject matter of realization, (b) frequency of similar transactions, (c) supplemental work on the property realized, (d) motive, (e) circumstances responsible for the realization and (f) length of period of ownership. No one factor is conclusive. See e.g. *HO v. Comptroller of Income Tax* [1994] SGITBR 2; *HQ v. Comptroller of Income Tax* [1997] SGITBR 1; *HT v. Comptroller of Income Tax* [1998] SGITBR 3; *NP v. Comptroller of Income Tax* [2007] SGHC 141; *TN v. Comptroller of Income Tax* [2007] SG ITBR 2. The local courts have also placed emphasis on the financing method as an additional badge of trade where a taxpayer did not have the necessary capital to finance its acquisition and had to rely partly or entirely on

borrowings. See e.g. *HH v. Comptroller of Income Tax* [1991] SGITBR 2; *HQ v. CIT*, supra; *HT v. CIT*, supra. Classification of asset in company records and accounts is only one factor to be taken into consideration amongst other factors. See e.g. *HO v. CIT*, supra; *HT v. CIT*, supra.

Business

28.3.4 In *MSI Pte Ltd v. Comptroller of Income Tax* (1997) MSTC 5,221, it was held that "... in general, "business" is used to indicate a wide group of activities that are not purely recreational, that are commercially undertaken and usually, but not necessarily, for profit. In Section 10(1)(a) of the SITA, the word "business" is placed together with "trade", "profession" or "vocation" and should therefore be interpreted in that light." Trade is therefore a subset of business in that all trades are businesses, while not all businesses are trades.

28.3.5 In *HP v. Comptroller of Income Tax* [1996] SGITBR 1, the ITBR relied on the dictum of the court in *Ferguson v. FCT* 79 ATC 4261 in identifying certain general characteristics of 'business', which included the profit-making nature of its activities, repetition and regularity of activities, organizational structure, keeping of books and records, volume of operations, and amount of capital employed. There is no presumption that a taxpayer is in business. In that case, the ITBR referred to the characteristics of a 'business' and concluded that the Appellant taxpayer in that case was not in business but was merely acting as a landlord, and that income derived from the properties held by the Appellant taxpayer was therefore rightly classified as rental income to be taxed under section 10(1)(f).

28.3.6 To ascertain what business a taxpayer is engaging in, one should look at what the company actually carries on rather than what it professes to carry on. The objects clause in a company's memorandum of association could provide some useful guide as to the nature of its business, but is not conclusive. See *T Ltd v. Comptroller of Income Tax* [2006] 2 SLR 618. In the context of property developers, a company which describes its business as property development or itself as a property developer is prima facie more likely to be treated as carrying on the business of property development for sale, and not for investment or both. See *Mount Elizabeth Pte Ltd v. Comptroller of Income Tax* [1986] SLR 421.

Profession

28.3.7 The word "profession" is not defined in the ITA. In the words of Scrutton LJ in *IRC v. Maxse* 12 TC 41, "... a 'profession' in the present use of language involves the idea of an occupation requiring either purely intellectual skill, or of manual skill controlled, as in painting and sculpture, or surgery, by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale or arrangement for the production or sale of commodities." However, where an individual exercises professional skills under the employment of another (for example, a doctor by a hospital), the individual is considered an employee and should be taxed under section 10(1)(b) rather than section 10(1)(a).

Vocation

28.3.8 The word "vocation" is not defined in the ITA. According to Denman J. in *Patridge v. Mallandaine* (1886) 2 TC 179, "... the word 'vocation' is analogous to 'calling', a word of wide significance, meaning the way in which a person passes his life." Therefore a bookmaker who accepts bets or an individual who habitually

supplies racing forecasts to newspapers for reward is carrying on a vocation. See *Patridge v. Mallandaine*, supra and *Graham v. Arnott* (1941) 24 TC 257.

Employment

28.3.9 To qualify as an employee, one must be rendering services under a contract of services, rather than a contract for services. In *Ready Mix Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497, MacKenna J. sitting in the English High Court stated that an employer is one who agrees to a contract of services and in such an arrangement, "the servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master (employer). He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make the other master." The distinction between a contract of services and contract for services is important because bad debts, capital allowances and losses cannot be claimed under a contract of services, while the types of expenses that can be allowed to an employee are very restricted.

28.3.10 A definition for "employee" was inserted in section 2(1) of the ITA in 1993, so that an employee "in relation to a company, includes a director of the company". The legislative intent was to tax gains, profits or perquisites which a director of a company obtains from that company, even though no employment contract exists between the director and the company. See *RS and Another v. Comptroller of Income Tax* [2001] SGITBR 1.

28.3.11 "Gains or profits from employment" include:

- (a) wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance (other than a subsistence, travelling, conveyance or entertainment allowance which is proved to the satisfaction of the Comptroller to have been expended for purposes other than those in respect of which no deduction is allowed under Section 15) paid or granted in respect of the employment whether in money or otherwise [section 10(2)(a)];
- (b) value of any food, clothing or lodging provided or paid for by the employer [section 10(2)(b)];
- (c) annual value of any place of residence provided by the employer [section 10(2)(c)];
- (d) any sum standing to the account of any individual in any pension or provident fund or society which the individual is entitled to withdraw upon retirement or which is withdrawn therefrom [section 10(2)(d)];
- (e) gains or profits from share option schemes [section 10(6)];
- (f) Excess contributions to the Central Provident Fund (CPF) or other designated pension or provident funds [section 10C].

In practice, the Comptroller has made a number of concessions on the taxability of certain types of benefits-in-kind received by an employee. The administrative practice of the Comptroller can be found on the IRAS website at the following URL: <http://www.iras.gov.sg/irasHome/page04.aspx?id=2890>.

Section 10(1)(g)

28.3.12 Section 10(1)(g) acts as a very wide catch-all provision which captures any other payments of an income nature which do not fall within any of the descriptions in paragraphs (a) to (f) of that subsection. The words are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and intention of Parliament. See *HZ v. Comptroller of Income Tax* [2004] SGITBR 8. Therefore,

gains from extraordinary isolated transactions may constitute income where the taxpayer had the requisite intention to make a profit or gain before entering into the transaction. The means or mode of realizing the profit need not be specific or precisely determined at the outset. See *IB v. Comptroller of Income Tax* [2005] SGDC 50.

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SECTION 4 SOURCE RULES

28.4.1 Singapore adopts a territorial basis of taxation. Under section 10(1) of the Act, income tax is levied only on income “accruing in or derived from Singapore or received in Singapore from outside Singapore” in respect of one of the charges set out under section 10(1)(a) to (g). In other words, the source of the income must be in Singapore before it can be subject to Singapore income tax.

Source of Trade or Business Income

28.4.2 Ascertaining the actual source of income is a practical matter of fact. See *CH Pte Ltd v. Comptroller of Income Tax* (1988) 1 MSTC 7,022. In *CIR v. Hang Seng Bank Ltd* [1991] 1 AC 306, Lord Bridge of Harwich proposed a “broad guiding principle” to determine the source of a trade or business income. An inquiry on source should be based on a consideration of “what the taxpayer has done to earn the profit in question”. This is affirmed by Lord Jauncey of Tullichettle in *CIR v. HK-TVB International Ltd* [1992] 3 WLR 439 at 444: the question is to be addressed by reference to what the taxpayer has done to earn the profit in question and where he has done it.

28.4.3 The *Hang Seng Bank* case was relied on by the ITBR in *HM v. Comptroller of Income Tax* [1993] SGITBR 1. In that case, it was held that incomes arising from the sale of securities by a Singapore incorporated subsidiary of an overseas company effected on an overseas exchange by way of instruction to an overseas broker by taxpayer’s non-resident director outside of Singapore are not incomes “accruing in or derived from Singapore”. While the broad guiding principle is clear, it is less obvious how it is to be applied. For example, in the case of *HM*, the ITBR considered the place where whereby the contract was made and executed to be a relevant factor in its decision. In contrast, in the *CH* case, interest on overdraft facilities procured by a Singapore incorporated company for disbursement to be made in Singapore and credited to its Singapore account is held to be sourced in Singapore, even though both the execution of the loan agreement and the handing over of cheque took place in Malaysia.

28.4.4 In *ING Baring Securities (Hong Kong) Ltd v. Commissioner of Inland Revenue* [2007] HKCU 1666 Hong Kong Court of Final Appeal clarified that focus of the inquiry should be *on establishing the geographical location of the taxpayer’s profit-producing transactions themselves as distinct from activities antecedent or incidental to those transactions. Such antecedent activities will often be commercially essential to the operations and profitability of the taxpayer’s business, but they do not provide the legal test for ascertaining the geographical source of profits for the purposes of section 14...*

The focus is therefore on the profit-producing transaction, rather than the antecedent or incidental activities.

Source of Employment Income

28.4.5 There are several statutory exceptions and variations to the employment income source rule. Section 12(4) of the ITA deems gains or profits from employment exercised in Singapore to be derived from Singapore for the purposes of section 10(1), regardless of whether it is a Singapore employment or a foreign employment. It is a deeming provision, not a charging provision. It serves to remove any ambiguity caused by application of the charging provision under section 10(1) by deeming certain types of incomes to be Singapore sourced. Section 13(6) provides for the exemption of income derived in Singapore by short term visiting employees. In addition, under the Not Ordinarily Resident (NOR) scheme (section 13N), an NOR individual can enjoy time apportionment of Singapore employment income if the individual has spent at least 90 days outside Singapore for business reasons, and his total Singapore employment income must be at least \$160,000.

28.4.6 The leading case to date on the issue of source of income received by an employee is the Court of Appeal's decision in CIT v. HY [2006] 2 SLR 405, in which the majority considered the place where the activities which taxpayers had done which earned him the profits or gains were carried out to be a key factor in determining the source of employment income. Yong Pung How CJ. (as he was then) opined that

[I]n deciding whether income was derived from or accruing in Singapore, one must look to the originating source of those gains or profits. This is essentially a question of fact to be determined based on a scrutiny of the circumstances in each individual case. It is impossible to lay down fixed legal rules or tests, and a practical approach based on what a practical man would regard as the real source of income is to be adopted. The broad guiding principle is to focus on what the taxpayer had done which earned him the gains or profits in question, and then to identify the location where those activities that he had engaged in or the work he had done took place. This may be a difficult inquiry, bearing in mind that the gains or profits may typically be derived from a series of activities which may take place in more than one country.

28.4.7 The choice of the words "broad guiding principle" suggests that there may be situations where the location of where the employment is exercised may not correspond with the location of the originating source, but the location where the employment is exercised is prima facie one of the key factors in deciding whether or not income from an employment is sourced in Singapore. However, as the case involved income under section 10(1)(g) and not section 10(1)(b), it is unclear whether this broad guiding principle also applies to section 10(1)(b) employment income.

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SECTION 5 COMPUTING TAXABLE PROFITS

General formula

28.5.1 The general formula for computing taxable profits can be represented as follows:

$$A - B - C - D - E - F,$$

where A is the sum of income receipts accrued to the taxpayer;
B is the sum of expenses incurred by the taxpayer which are of an income nature;
C is the total allowances to be made to the taxpayer;

D is any loss relief to be accorded to the taxpayer;
E is any deductions for donations made by the taxpayer;

and

F is any relief to which the taxpayer is entitled, provided he is an individual taxpayer

Receipts

28.5.2 As the Singapore income tax is a tax on income only, gains of a capital nature are not taxable. Similarly, only revenue expenses are deductible, whereas capital expenses are not (although a capital allowance may be granted in certain cases – see section 4 supra). The ITA does not define what is meant by “income”. Therefore the distinction between income and capital is an issue to be determined on a case-by-case basis by reference to common law. On the characterization of receipts, the court is not bound by accounting evidence; rather, it is for the court to decide whether a particular item should be regarded as accrued income for the purposes of tax liability. See *Pinetree Resort Pte Ltd v. Comptroller of Income Tax* [2000] 4 SLR 1 and *ABD Pte. Ltd. v. Comptroller of Income Tax* [2009] SGITBR 3.

28.5.3 It is not easy to determine whether a particular payment constitutes an income receipt or a capital receipt. Greene MR once bemoaned the extent of this difficult by claiming that “in many cases, it is almost true to say that the spin of a coin would decide the matter almost as satisfactorily as an attempt to find reason. See *Inland Revenue Commissioners v. British Salmson Aero Engines, Limited* (1938) 2 KB 492 at 498. The classic test to distinguish between capital and income receipts is to distinguish between sale of fixed capital of a business (which produces capital receipt) and sale of its circulating capital (which produces income receipt). Viscount Haldane summarized the classic economist’s definitions of fixed and circulating capital in *John Smith & Son v. Moore* (1921) 12 TC 266:

Adam Smith described fixed capital as what the owner turns to profit by keeping it in his own possession, circulating capital as what he makes profit of by parting with it and letting it change master. The latter capital circulates in this sense... It was not by selling these contracts, of limited duration though they were, it was not by parting with them to other masters, but by retaining them, that he was able to employ his circulating capital in buying under them... they were nonetheless part of his fixed capital.

However, this distinction may not be easy to apply in practice. The classification of an asset depends upon the trade in question, and this can prove to be quite difficult to determine. For example, a computer may be a fixed asset for a law firm, but the same item will be the circulating asset of a computer manufacturer. An alternative test is to distinguish between receipts which relate to assets forming part of the permanent structure of the business and those which do not. This distinction is often helpful in cases where the receipt is compensation received by a trader in lieu of the destruction of certain contracts.

28.5.4 There is no simple infallible test that can be applied to all cases, and therefore it is essential that the decided cases be read and considered for guidance. Although judges have generally been unsuccessful in establishing precise rules which can be applied to all situations to distinguish between income and capital receipts, there are several general propositions that can be derived from case law. These are summarized in *Whiteman on Income Tax*³. The five basic propositions are:

(a) Payments received for sale of business assets are prima facie capital receipts.

- (b) Payments received for destruction of recipient's profit-making apparatus are capital receipts.
- (c) Payments received in lieu of trading receipts are revenue receipts. In *ZT v. Comptroller of Income Tax* [2009] SGITBR 1, the ITBR held that compensation received by a property developer for delay in completion of sale of property to the developer was liquidated damages for loss of rental income during delay, and is therefore a taxable receipt as it was payment made in lieu of trading receipts.
- (d) Payments received in return for imposition of substantial restriction on the activities of the trader are capital receipts.
- (e) Payments of a recurrent nature are more likely to be treated as revenue receipts.

28.5.5 Besides the requirement that the receipt be of an income nature, it must also have accrued to the recipient before it can be taxed in his hands. The word "accrue" means "to which any person has become entitled". See *Pinetree Resort Pte Ltd v. Comptroller of Income Tax* [2004] 4 SLR 1. Where club constitution provides that entrance fees become due and payable at the time of membership to the club, the entrance fee would "accrue" as income once a member is admitted to membership. The fact that the entrance fee is to be paid in installments does not make a difference because the club would be legally entitled to the entrance fee at the point of admission to membership.

Expenses

28.5.6 The relevant business must have commenced before an expense is deductible, since tax is payable only "for whatever period of time [a] trade, business, profession or vocation may have been carried on or exercised" under section 10(1)(a). For a business to commence, the taxpayer must have in place an income-generating asset or income-earning structure. See *Mitsui-Soko International Pte Ltd v. Comptroller of Income Tax* [1998] MSTC 7. The grant of the Temporary Occupation Permit (TOP) of a shopping mall is the point at which the operator of that shopping mall can be considered to have commenced business. Any expenses incurred in respect of that business prior to granting of TOP, i.e. before commencement of that business, are therefore not deductible. See *T Ltd v. Comptroller of Income Tax* [2006] SGCA 13. Similarly, the business of letting of premises could not have started until the date of TOP. See *IE v. Comptroller of Income Tax* [2005] SGITBR 1.

28.5.7 In addition, the expenditure must necessarily be incurred before a deduction may be taken. One common problem is the situation where expenses are incurred in respect of a long-term contract. Where the completed contract method of accounting is adopted for a long-term contract, all receipts and expenses are recognized only upon completion of the project. See *TH Ltd v. Comptroller of Income Tax* [1981] 2 MLJ 105, [1982] 1 MLJ 303. In the case of property development, the full amount of receipts and expenses must be recognized at the point of grant of TOP even if less than 100% of the property development project is completed. No apportionment of expenses is allowed. See *Comptroller of Income Tax v. KE* [2006] SGHC 140.

28.5.8 Besides the threshold requirements of commencement of business and inurrence of expense, there is a two-tier test to be satisfied before expenditure may be deducted. First, an expense is prima facie deductible if it satisfies the general deduction formula under section 14(1), which provides for the deduction of "outgoings and expenses wholly and exclusively incurred during that period... in the production of the income" or if it is otherwise specifically authorized pursuant to, inter alia, sections 14(1)(a) to (h). Second, an expense is not deductible if it falls within the prohibitions set out in section 15(1). Section 15(1)(c) and (d) specifically prohibits the deduction of expenses and losses of a capital nature.

Therefore, expenses are deductible if expended in the process of producing income but not if their expenditure is reflected as part of the continuing capital of the enterprise and capable of subsequent disposal.

28.5.9 In *HP v. Comptroller of Income Tax* [1996] SGITBR 1, the ITBR relied on Dixon J's exposition in *Sun Newspapers and Associated Newspapers Ltd v. FC of T* 5 ATD 87 of the factors one should consider in deciding whether an amount spent was capital or revenue expenditure: (1) the character of advantage sought from making the expenditure, (2) the manner in which it is to be used, relied upon or enjoyed and in this and under the former head recurrence may play its part, and (c) the means adopted to obtain it; that is, by providing a periodical reward or outlay to cover its use or enjoyment for periods commensurate with the payment or by making a final provision or payment so as to secure future use or enjoyment. Therefore license fees paid by a taxpayer for the use of a piece of land on which a warehouse is constructed constitutes capital expenditure. Similarly, geomancy fees incurred in relation to acquisition to land, buildings and associated facilities which were of a capital nature and hence not deductible. See *ABD Pte. Ltd. v. Comptroller of Income Tax*, supra. Where the issue involves the deductibility of interest expenses, the nature of the interest expenses depends on the purpose for which the loan was taken out. If the loan was taken out to bring into existence an asset or an advantage for the enduring benefit of a trade or business, then the loan and its interest expense are capital in nature and not deductible. See *JC v. Comptroller of Income Tax* [2004] SGDC 244. The words "enduring benefit" mean "a benefit which endures in the way that fixed capital endures; not a benefit that ensures in the sense that for a good number of years it relieves you of a revenue payment". See *Anglo Persian Oil Co, Ltd v. Dale* (HM Inspector of Taxes) (1931) 16 TC 253. Therefore, a payment may be deductible even though it provides a long term advantage to the trade. It may be deductible even if it relates to a capital asset, provided that it was made for revenue benefit. Considerable economy, saving in working expenses and improved efficiency of business are considered "revenue benefits" in *Comptroller of Income Tax v. IA* [2006] 4 SLR 161.

28.5.10 In addition, the expense for which a deduction is sought must also be "wholly and exclusively" in the production of the income. The words "wholly and exclusively" suggest that dual purpose expenses are not deductible. Therefore expenditure incurred by a solicitor in purchasing a notebook computer and a briefcase are not deductible as these items are capable of other uses not connected to the production of his or her income. See *HR v. Comptroller of Income Tax* [1998] SGITBR 1. The burden of proving that the expenditure is wholly and exclusively incurred in the production of the income lies with the taxpayer. In *NE v. Comptroller of Income Tax* [2006] SGHC 199, the Singapore High Court adopted the following propositions as elucidated by Millet LJ in *Vodafone Cellular Ltd v. Shaw* [1997] STC 734 on the application of the exclusivity test:

(1) The words "for the purposes of the trade" (in the UK Income Tax Act which is in substance similar to 'for the production of the income' in the ITA) mean to serve the purposes of the trade, not of the taxpayer.

(2) To ascertain whether the payment was made for the purposes of the taxpayer's trade it is necessary to discover his object in making the payment. This involves an inquiry into the taxpayer's subjective intentions at the time of the payment.

(3) The object of the taxpayer in making the payment must be distinguished from the effect of the payment. A payment may be made exclusively for the purpose of the trade even though it also secures a private benefit, provided the

securing of the private benefit was not the object of the payment but merely a consequential and incidental effect of the payment.

(4) Although the taxpayer's subjective intentions are determinative, these are not limited to the conscious motives at the time of payment. Some consequences are so inevitably and inextricably involved in the payment that, unless merely incidental, must be taken to be a purpose for which the payment was made.

(5) The question does not involve an inquiry on whether TP consciously intended to obtain a trade or personal advantage by the payment. Rather, the question is whether the particular object of the taxpayer was in making the payment. Once ascertained, its characterization as a trade or private purpose is a matter for the court, and not the taxpayer.

In that case, it was held that the Appellant taxpayer had failed to demonstrate that the expenditure incurred in engaging the services of a bodyguard for one of the directors of the appellant taxpayer company was wholly and exclusively incurred in the production of the income.

28.5.11 In addition to the requirements that the expenditure be of an income nature and is wholly and exclusively incurred in the production of the income, there must be a nexus between the incurrence of expenditure and the production of income. In *Pinetree Resort Pte Ltd v. Comptroller of Income Tax* [2000]4 SLR 1, Yong Pung How CJ considered the nexus between the incurrence of an expense and the production of income to be determined by looking at the business "as a whole set of operations directed toward producing income, in which case an expenditure which is not capital expenditure is usually considered as having been incurred in gaining or producing income". This wider nexus test was adopted by the Court of Appeal in *Comptroller of Income Tax v. IA* [2006] 4 SLR 161, in which Andrew Phang JA noted that "[a] holistic view that eschews artificiality and technicality ought to prevail" in the application of the nexus test. Therefore, prepayment penalty and guarantee expenses incurred in relation to the early repayment of interest to a syndicated loan facility taken to fund the construction of a condominium project by the respondent property development company were deductible, as they were incurred to obtain substantial interest savings for the respondent and could therefore be regarded as having been incurred "in the production of income".

28.5.12 There is also a requirement of direct nexus between the actual expenses incurred and the actual income produced. In *JD Ltd v. Comptroller of Income Tax* [2005] SGCA 52, the Singapore Court of Appeal held that investment must produce income for the interest expense on the investment to be deductible. Therefore, where interest expenses are incurred to maintain a portfolio of share investments in which some share investment counters do not yield dividend income, then only the part of the interest expenses attributable to the income-producing share investment counters are deductible. This requirement is captured under section 10E of the ITA specifically in respect of taxpayers in the "business of making investments". Expenses incurred by a taxpayer in respect of non-income producing investments made or held in the course of its business of making investments are not deductible. On the other hand, expenses incurred in respect of income producing investments are deductible only to the extent of income derived from such investments, and any excess expenses will be disregarded. Section 10E(2) defines "business of making investments" to include the business of letting immovable properties. There is no requirement that "the business of letting immovable properties" had to be the whole or main business of the company. Therefore, in the case of a service apartment operator, income derived from services provided to its tenants are ancillary to the business of letting immovable properties and are therefore part of the income derived from

the business of letting the property. See *Comptroller of Income Tax v. VJ* [2009] 2 SLR 91.

Capital Allowances

28.5.13 Capital expenditure incurred on the provision of machinery or plant qualifies for capital allowances if such expenditure was incurred for the purpose of a trade, business or profession⁴. Therefore capital allowance will not be made to a recreational club for the cost of land, buildings and other associated costs incurred in the construction of its club building and facilities. See *ABD Pte. Ltd. v. Comptroller of Income Tax*, supra.

28.5.14 The Act is silent on what is meant by "machinery" or "plant". The Privy Council's definition of "machinery" in a non-tax case, *Corporation of Calcutta v. Chariman, Cossipore and Chitpore Municipality* [1922] ILR 49 Cal., is instructive:

"machinery" when used in ordinary language, prima facie, means some mechanical contrivances, which by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation, of their respective parts generate power, or evoke, modify, apply, or direct natural forces with the object in each case, of effecting so definite and a specific result.

28.5.15 The classic case law definition of "plant" can be found in Lindley J.'s judgment in *Yarmouth v. France* (1887) 19 QBD 467:

... in its ordinary sense, ["plant"] includes whatever apparatus is used by a businessman for carrying on his business – not his stock-in-trade, which he buys or makes for sale; but all goods and chattels, fixed or moveable, live or dead, which he keeps for permanent employment in his business.

28.5.16 In considering whether a particular item constitutes "plant", one must do so "by considering carefully the nature of the particular trade being carried on, and the relation of the expenditure to the promotion of the trade". Per Lord Wilberforce, *Inland Revenue Commissioners v. Scottish & Newcastle Breweries* [1982] STC 296 at 299, and endorsed by the Income Tax Board of Review in *IH v Comptroller of Income Tax* [2005] SGITBR 2 and the Board of Review and the High Court respectively in *ZF v. Comptroller of Income Tax* [2008] SGITBR 2, [2010] SGHC 14. Where a building or structure is concerned, one must address the issue of whether the building or structure functions as premises or plant. Therefore, demountable workers' dormitories provided by a taxpayer in the business of providing accommodation to foreign workers are not to be regarded as plant as the provision of shelter is a typical function of premises. This is notwithstanding the fact that the dormitories are demountable and can be transported efficiently to a new site upon notice to vacate the land by the landlord, as the portability and demountability are merely properties of the dormitories and not a function. See the High Court decision of *ZF v. Comptroller of Income Tax*, supra.

28.5.17 Under section 19, an initial allowance of 20% of the expenditure incurred in acquiring a capital asset is generally made to a taxpayer in respect of that asset on due claim, and this allowance is normally made in the year of assessment relating to the basis period in which the expenditure was incurred. An annual allowance is then to be made to the taxpayer in subsequent years of assessments, where at the end of the basis period for that year of assessment the machinery or plant is in use by the taxpayer for the purpose of his trade,

profession or business. The amount of annual allowance to be made is determined by dividing the qualifying cost (after deducting any initial allowance granted) by the statutory working life of the asset as defined under the Sixth Schedule. Section 19A(1) allows capital allowances to be made at an accelerated rate of 33 1/3% per annum over a period of 3 years. With effect from YA 2009, accelerated capital allowance under section 19A(1) is made on a claim basis, and therefore, taxpayers may choose to defer claiming capital allowances even after the 3-year period. Section 19A(2) to (10) provides for 100% write-off of any expenditure incurred in the provision of computers, prescribed automation equipment and other specified items of plant and machinery. Sections 19 and 19A are mutually exclusive – therefore a taxpayer may not claim capital allowance under both sections for the same asset. Once a taxpayer has elected to claim capital allowance under section 19A, it may not claim under section 19 in subsequent years.

28.5.18 Besides the difference in the rate at which capital allowance may be made, section 19 also differs from section 19A in that the machinery or plant must be in use at the end of the basis period for a particular year of assessment in order for a capital allowance to be made under section 19 in that year of assessment. In *Comptroller of Income Tax v GE Pacific Pte Ltd* [1994] 2 SLR 690, the Singapore High Court held that the purpose and object of the capital allowances provisions in the Act is for capital allowances to be available to the person who still has the machinery in use and as such, the buyer and not the seller would be entitled to the remaining capital allowances on the sale of the plant and machinery between related parties as if no sale had taken place. In contrast, section 19A(11) specifically disallows a claim for accelerated capital allowance to be barred for the sole reason that the person has not in use the machinery or plant at the end of the basis period for that year of assessment.

28.5.19 Apart from section 19 and 19A capital allowances for expenditure incurred on machinery or plant, the ITA also provides for other specific types of capital allowances, such as the industrial building allowance (see sections 16 to 18), which is available to a taxpayer who has incurred capital expenditure (such as cost of acquisition of land, architect's fees, legal charges and stamp duties) on the construction of an industrial building or structure within the meaning of section 18(1), and which is occupied for the purposes of a trade. In order to claim industrial building capital allowance, the taxpayer must have commenced its trade, and the industrial building or structure must be used for the purposes of that trade. See *Mitsui-Soko International Pte Ltd v. Comptroller of Income Tax* [1988] MSTC 7349, where the High Court held that industrial building allowance of a taxpayer cannot be used to set off against interest income derived by that taxpayer. Other types of allowances include writing-down allowances for intellectual property rights (IPR) under s19B and for approved cost-sharing agreement for research and development activities under section 19C.

28.5.20 Unabsorbed capital allowances, industrial building allowances and writing-down allowances can be utilized in the following order:

- (a) set off against other income sources for the basis period of that year of assessment;
- (b) transferred to a related company under the group relief framework (see para 5.26 *infra*);
- (c) carried back to a previous year of assessment under the capital allowance / loss carryback scheme (see paras 5.27 to 5.28 *infra*).

Balancing Allowances and Charges

28.5.21 A balancing allowance or a balancing charge generally arises where the fixed asset (i.e. plant, machinery, building or structure, etc):

- (a) ceases to belong to the taxpayer;
- (b) the trade is discontinued;
- (c) in the case of machinery or plant provided for research and development and not for the purpose of the taxpayer's trade, profession or business, permanently ceases to be used for any research and development; or
- (d) in all other cases, the fixed asset is no longer used for the trade, profession or business.

28.5.22 A balancing charge is due where unutilized capital allowance exceeds the sales proceeds (i.e. the sale, insurance, salvage or compensation money) of the fixed assets, whereas a balancing allowance is due where the sales proceeds exceed the unutilized capital allowances of the fixed assets. In determining the balancing allowance or balancing charge, expenditure incurred to dismantle or to dispose of the fixed assets can be deducted from the sales proceeds. Compensation money to defray the costs of relocation of business however should not be taken into account. See *YE v. Comptroller of Income Tax* [2008] SGITBR 1.

Losses

28.5.23 Just as capital gains are not taxable in Singapore, capital losses are similarly not deductible for income tax purposes. However, losses arising from carrying on a trade, business, profession or vocation can be utilized in the following order (see section 37):

- (a) within the first year of assessment after the year in which the loss was incurred:
 - (i) firstly, against statutory income from the same trade, business, profession or vocation of the taxpayer;
 - (ii) secondly, against statutory income from any other trade, business, profession or vocation of the taxpayer;
 - (iii) thirdly, against statutory income from any other source;
- (b) in the same manner described in subparagraphs (a) (i) to (iii) supra in the next year of assessment, and so on.

Donations

28.5.24 Donations to approved institutions of public characters (IPCs) and other approved beneficiaries qualify for double tax deductions. Donations made to registered grant-making philanthropic organizations also qualify for double tax deductions provided that such donations are subsequently channeled to approved IPCs in Singapore within a specific time frame. To encourage charitable giving during the economic downturn, tax deduction for donation has been increased to 2.5 times the value of the donation made in YA 2009. Unabsorbed donations can be carried forward for a period of up to 5 years to set-off against future income. In the alternative, unabsorbed donations can be transferred to a related party under the group relief framework, provided that certain conditions are met.

Group Relief Framework

28.5.25 Section 37C of the ITA sets out the framework for the transfer of losses between companies belonging to the same group. Under the group relief system, a Singapore incorporated company belonging to a group of companies is allowed to transfer qualifying expenses (which are basically unabsorbed capital allowances, including industrial building allowance and other types of writing

down allowances, unabsorbed business losses and unabsorbed donations) to another Singapore incorporated company within the group provided, inter alia, that both companies:

- (a) have the same accounting year-end;
- (b) are members of the same group (i.e. 75% of the total number of issued ordinary shares of either company are beneficially held, directly or indirectly, by the other, or 75% of the total number of issued ordinary shares of both companies are beneficially held, directly or indirectly, but a third Singapore company) on the last day of the basis period for that year of assessment; and
- (c) have submitted a written election to transfer or claim the loss items as qualifying deductions together with their income tax returns .

Generally, qualifying deductions are to be transferred to a claimant company in accordance with the following priority: allowances, losses and donations. The rules governing the order of transfer of qualifying deductions are highly technical, and are explained in detail in the IRAS circular entitled "Loss Transfer System of Group Relief", available at

http://www.iras.gov.sg/irasHome/uploadedFiles/Quick_Links/e-Tax_Guides/groupreliefcircularrevised30jun06.pdf.

Companies which have been granted relief under the Economic Expansion Incentives (Relief from Income Tax) Act (Cap. 86) do not qualify for group relief.

Capital Allowance / Loss Carryback

28.5.26 Under the capital allowance / loss carry-back relief system, any person carrying on a trade, business, profession or vocation may, subject to certain conditions, carry back his unabsorbed capital allowances and unabsorbed trade losses for any year of assessment against his assessable income for the immediate preceding year of assessment. The deduction is capped at the amount of assessable income for the immediate preceding year of assessment, or \$100,000, whichever is less. Assessable income is determined in accordance with section 37 of the Act, less:

(a) in the case of a company, any deduction under section 37G for incremental expenditure on research and development, investment allowance as well as any current year unabsorbed capital allowance, unabsorbed trade loss and unabsorbed donation transferred from a transferor company or transferor companies under section 37C of the ITA;

(b) in the case of an individual, any unabsorbed capital allowance, unabsorbed trade loss and unabsorbed donation transferred from his spouse under section 37D of the ITA.

28.5.27 A number of enhancements have been made to the loss carry-back relief system which are applicable for the Years of Assessment 2009 and 2010 only. First, the amount of unabsorbed capital allowances and unabsorbed trade losses incurred in each of these two YAs that may be carried back is increased to \$200,000 for each YA. In addition, these unabsorbed capital allowances and unabsorbed trade losses may be carried back up to 3 YAs immediately preceding the YA in which the allowances and losses are incurred. The carry-back is to be made in the following order:

- (a) first, to the third YA immediately preceding the current YA;
- (b) then, where applicable, to the second YA immediately preceding the current YA;

(c) last, where applicable, to the YA immediately preceding the current YA.

Personal Reliefs

28.5.28 A number of reliefs are available under sections 39 to 40D of the ITA to different categories of individual taxpayers. The more common reliefs include wife relief, child relief, aged parent/grandparent relief, relief for life insurance premiums and contributions to approved pension, provident funds or society, relief for course fees, relief for CPF contributions by self-employed person and relief for contribution under the Supplementary Retirement Scheme. Individual taxpayers may claim particular reliefs only if they satisfy the conditions thereunder.

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SECTION 6 WITHHOLDING TAX

28.6.1 Sections 45 to 45GA of the ITA set out the framework for the withholding tax mechanism. The withholding tax was devised as a convenient means to collect taxes on certain forms of income payments from non-residents. Generally, when a payment made to a payee not known to the payor to be a resident in Singapore is Singapore sourced income, the local payer must withhold a certain percentage of the payment which represents a final tax payable by the non-resident payee. The types of payment covered by the withholding tax regime are interest (section 45), royalty fee, management fee and other fees referred to in section 12(6) and (7) (section 45A), non-resident director's remuneration (section 45B), certain types of unit trust distributions (section 45C), gains from disposal of real property (section 45D), withdrawals from Supplementary Retirement Scheme (SRS) account by non-citizen SRS members (section 45E), income from vocation or profession carried on by non-resident individual or firm (section 45F), distributions from real estate investment trusts (section 45G) and income derived by a public entertainer in Singapore in his capacity as a public entertainer (section 45GA).

28.6.2 Any amount which a local payer fails to deduct in satisfaction of his withholding obligations under the ITA is treated as a debt due from him to the Government and may be recovered as such. See section 45(3). In addition, there are penalties for late payment and for failure to give notice to the Comptroller of any amount deducted in accordance with the withholding tax provisions under the Act. See section 45(4) and (5).

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SECTION 7 INTERNATIONAL ASPECTS OF INCOME TAXATION

28.7.1 The principle of national tax sovereignty gives rise to problems of double income taxation. Cross-border transactions are exposed to the risk of taxation under the tax laws of multiple jurisdictions. Sovereign states therefore enter into double taxation agreements (DTAs) to mitigate such inequity. Over the years, Singapore has established an extensive network of comprehensive DTAs and limited treaties covering income from shipping and/or air transport. To mitigate the problem of double taxation of particular types of income, treaties may provide for the exemption of income that has already been taxed in one state by the other state. Alternatively, treaties may allow a tax credit to be taken in one state for tax paid in the other state, or in certain cases, a tax-sparing credit to be taken

in one state for tax which would otherwise have been paid in one treaty state but was not, i.e. "spared", under special laws in that state, usually to promote economic development. Section 50 of the ITA sets out the manner in which tax credit under a DTA is to be given. Singapore essentially adopts an ordinary credit method which limits the amount of foreign tax credit allowable on the income in question to the amount of income tax it would otherwise have been subject to in Singapore but for the tax credit. See section 50(3).

28.7.2 In 2009, Singapore announced its decision to adopt the OECD standard on exchange of information (EOI). Legislative amendments have been made to remove domestic hurdles to effective information exchange. The first protocol was signed with Belgium on July 16, 2009, which on entry into force, will amend the Belgium-Singapore DTA and allow for effective exchange of information between the two contracting states, subject to express limitations on "fishing expeditions". As of 4 February 2010, Singapore has EOI arrangements with 18 treaty partners.

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SECTION 8 ANTI-AVOIDANCE

28.8.1 Singapore has adopted a General Anti-Avoidance Rule (GAAR) found in section 33 of the ITA. It is based on the old section 99 of the New Zealand Income Tax Act and the old section 260 of the Australian Income Tax Assessment Act⁵. Although the GAAR is worded very broadly, the Minister for Finance had assured during the relevant part of the Parliamentary debate that the "judicial interpretations of legislations having similar wordings such as in New Zealand and Australia" will provide "adequate safeguards" against an overly expansive application of the GAAR, "for there is a considerable body of case law on which we can rely for the purpose of construing the proposed section 33".

28.8.2 However, Australia and New Zealand have adopted different approaches towards the interpretation of their respective GAARs. The New Zealand courts adopted a purposive approach by asking the question of whether the taxpayer has demonstrated that the specific provision he had relied on "had been used in manner which was within Parliament's purpose and contemplation when it enacted them". See *Accent Management Ltd v. Commissioner of Inland Revenue* [2008] NZSC 115. The Australian courts, on the other hand, formulated a number of independent tests, such as the predication test⁶ (whether one is able to predicate, by looking at the overt acts, that the transaction was implemented in that particular way so as to avoid tax and was not capable of explanation by reference to ordinary business or family dealing), the choice principle⁷ (if the Act offers two express choices to a taxpayer, then even if the taxpayer exercises such a choice purely for tax purposes, his action cannot fall foul of section 260) and the antecedent transaction doctrine⁸ (the GAAR would apply to a taxpayer who had already embarked on a particular transaction which would have given rise to a particular tax liability but then changed his or her method of effecting the result for tax considerations and not commercial ones) .

28.8.3 It is not clear whether the local courts follow the GAAR jurisprudence of Australia or New Zealand. In the case of *UOL Development (Novena) Pte Ltd v. Commissioner of Stamp Duties*, which involves the application of the GAAR in the Stamp Duties Act (Cap. 312)⁹, the High Court appeared to place much emphasis on Parliament's intention behind the enactment of the specific provision in question relied on by the appellant taxpayer. This appears to be similar to the purposive approach advocated by the New Zealand Supreme Court in *Accent*

Management. However, the learned judge also referred to the case of *Mullens v. FCT* (1976) 6 ATR 504 and appeared to suggest that the antecedent transaction doctrine would have been applicable had the facts in the present case been more similar to those in *Mullens*.

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SECTION 9 OBJECTIONS AND APPEALS

28.9.1 Under section 76(3) of the Act, a taxpayer may object to an assessment raised by the Comptroller of Income Tax within 30 days of receipt of the Notice of Assessment, after which the assessment shall be considered final unless (a) there is an error or mistake within the meaning of section 93A, or (b) the Comptroller decides by virtue of section 74(4) of the Act to extend the 30-day period because the taxpayer was unable to object within the stipulated time owing to absence, sickness or other reasonable cause. The purpose of the 30-day window for objection to an assessment is to have finality in taxation matters.

28.9.2 An error or mistake under section 93A is "something done incorrectly through ignorance or inadvertence". Therefore, if there is "a change of opinion of the auditors or accountants in respect of the accounts", or if there is "a change of mind of the directors of the company in connection with how any part of the accounts should be made up", the original opinion or decision cannot be regarded as an error or mistake within the meaning of section 93A. See *Extramoney v. CIR* [1997] 2 HKC 38 at 50.

28.9.3 In the event where the Comptroller is unable to agree with the taxpayer on the amount of tax liable to be paid, he will issue a Notice of Refusal to Amend (commonly known as the "IR 23"). The taxpayer will then have a choice to bring the matter for review before the ITBR, which is an administrative tribunal established under section 78 of the ITA. The losing party will have a right of appeal to the High Court. The Court of Appeal is the final appellate court on taxation matters in Singapore.

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SECTION 10 ADVANCE RULING SYSTEM (ARS)

28.10.1 Taxpayers may apply, for a fee, to the IRAS for an advance ruling by the Comptroller under the ARS on the tax treatment that will be accorded to any proposed business arrangement based on an interpretation of current income tax legislation. The application should be made in accordance with Part I of the Seventh Schedule of the Income Tax Act. The Comptroller is bound to apply the law in the manner set out in a ruling made under the ARS once it is issued.

28.10.2 Although such a ruling is final and binding on the Comptroller, a taxpayer may choose not to follow the ruling. However, the taxpayer must indicate in his tax return whether he had previously sought an advance ruling and, if so, whether he had relied on that ruling. The Comptroller may make any necessary amendments in accordance with the advance ruling in the course of assessment. The taxpayer may then appeal against the assessment under section 76(2) of the Act, and the ordinary appeal process as set out in Section 9 above will follow.

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