

IRAS CIRCULAR

**SECTION 10E OF THE SINGAPORE INCOME TAX
ACT – ADDENDUM TO PRACTICE NOTES
1996/IT/2 DATED 22 JAN 1996,
1997/IT/3 DATED 30 JUN 1997
AND
1997/IT/5 DATED 31 DEC 1997**



**INLAND REVENUE
AUTHORITY
OF SINGAPORE**

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INTRODUCTION

Section 10E of the Income Tax Act (“ITA”) prescribes the rules on how to ascertain the income of companies and trustees of property trusts¹ which are able to demonstrate that they carry on the business of the making of investments². Clarifications on this section were provided via IRAS practice notes 1996/IT/2 dated 22 Jan 1996, 1997/IT/3 dated 30 Jun 1997 and 1997/IT/5 dated 31 Dec 1997.

2 The purpose of this circular is to inform of Government’s decision to grant an administrative concession by excluding from the provision of section 10E non-owners of immovable properties that carry on the business of letting immovable properties.

CURRENT TAX TREATMENT

3 Where a company or a trustee of property trust is able to demonstrate that it/he carries on the business of the making of investments, the following rules under section 10E of the ITA would be applicable:

- a) any outgoings or expenses incurred by the company or the trustee of property trust in respect of investments of that business which do not produce any income shall not be allowed as a deduction under section 14 of the ITA for that business or other income of the company or the trustee of property trust [section 10E(1)(a) of the ITA];
- b) any outgoings or expenses incurred by the company or the trustee of property trust in respect of investments of that business which produce any income shall only be available as a deduction under section 14 of the ITA against the income derived from such investments and any excess of such outgoings and expenses over such income in any year shall be disregarded [section 10E(1)(b) of the ITA]; and
- c) the allowance under sections 19, 19A, 20 and 21 of the ITA relating to that business shall only be available as a deduction against the income derived from investments of that business which produce any income and the balance of the allowances in any year shall be disregarded [section 10E(1)(c) of the ITA].

4 So long as a company or trustee of a property trust is in the business of the making of investments, the above stated rules of section 10E shall apply whether or not the company or trustee is the owner of the investment(s). Consequently, section 10E is applicable to a company or trustee of a property trust that carries on the business of letting immovable properties but is not the owner of the immovable properties (i.e. the immovable properties are leased from the owners).

¹ This section was extended to cover the trustee of a property trust with effect from 10 December 2002 and will also be made applicable to a partner of an LLP when the LLP Act is enacted.

² “Business of the making of investments” is defined under section 10E of the Income Tax Act to include the business of letting immovable properties. For more details on what is a business of the making of investments, please refer to paragraph 3 of the IRAS practice notes 1996/IT/2 dated 22 Jan 1996.

ADMINISTRATIVE CONCESSION

5 The Government has reviewed the scope of section 10E of the ITA, and has decided to grant an administrative concession to exclude non-owners of immovable properties that carry on the business of letting immovable properties from the provisions of section 10E. This administrative concession shall not apply in any case where arrangements are entered into on a non-arm's length basis³ by such non-owners with the owners of the immovable properties so as to obtain a tax advantage that is not intended by this concession. Non-owners of immovable properties include lessees of properties, main tenants of food courts that sublet stalls to operators etc.

6 This administrative concession will take effect from YA 2005.

ENQUIRIES

7 For any enquiries or clarification on this circular, please call 1800-3568622.

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³ Whether an arrangement is on an arm's length basis is a question of fact.