IRAS SUPPLEMENTARY CIRCULAR

TAX EXEMPTION

FOR

FOREIGN-SOURCED DIVIDENDS,

FOREIGN BRANCH PROFITS

AND

FOREIGN-SOURCED SERVICE INCOME

INLAND REVENUE
AUTHORITY
OF SINGAPORE

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IRAS SUPPLEMENTARY CIRCULAR

TAX EXEMPTION FOR FOREIGN-SOURCED DIVIDENDS, FOREIGN BRANCH PROFITS AND FOREIGN-SOURCED SERVICE INCOME

INTRODUCTION

This circular is to supplement the IRAS circular dated 21st May 2003 on "Tax Exemption for Foreign-sourced Dividend, Foreign Branch Profits and Foreign-sourced Service Income" (hereinafter referred to as "the main circular"). This supplementary circular contains two parts, namely –

a) Announcement of the Government's decision to grant a tax concession to regard the condition stipulated under section 13(9)(a)[1] of the Singapore Income Tax Act (revised edition 2004) ["ITA"] (hereinafter referred to as "the subject to tax condition") as met for any foreign-sourced dividend, foreign branch profit or foreign-sourced service income (hereinafter referred to as "the specified foreign income") that has not been subjected to tax in the foreign jurisdiction from which it is received, if the exemption from tax in that foreign jurisdiction (on the specified foreign income itself, and in the case of a foreign-sourced dividend, on the income from which the dividend is paid as well) is a direct consequence of that foreign jurisdiction granting a tax incentive for carrying out substantive business activities in that jurisdiction [see paragraphs 7 to 9]; and

b) Clarification on what is a fixed place of operation for the purpose of granting tax exemption on foreign-sourced service income [see paragraphs 10 to 13].

CURRENT TAX EXEMPTION FOR FOREIGN-SOURCED INCOME RECEIVED IN SINGAPORE

2 Under section 13(8) of the ITA, tax exemption is granted to all persons resident in Singapore on their specified foreign income received in Singapore on or after 1st June 2003, provided:

a) the specified foreign income has been subjected to tax in the foreign jurisdiction from which the income is received [section 13(9)(a) of the ITA];

b) at the time the specified foreign income is received in Singapore, the headline tax rate of the foreign jurisdiction from which the income is received is at least 15% [section 13(9)(b) of the ITA]; and

[1] The condition is that foreign-sourced dividend, foreign branch profits or foreign-sourced service income must be subject to tax of a similar character to income tax (by whatever name called) under the law of the territory from which the income is received.

c) the Comptroller of Income Tax is satisfied that the tax exemption would be beneficial to the person resident in Singapore [section 13(9)(c) of the ITA].

3 In Budget 2004, DPM and Minister for Finance announced his decision to exempt from tax all foreign-sourced income received in Singapore directly by resident individuals on or after 1st January 2004. With this enhancement of the tax exemption of foreign-sourced income received in Singapore, all foreign-sourced income (instead of just the specified foreign income) received in Singapore by resident individuals on or after 1st January 2004 is tax exempt except where the foreign-sourced income is received in Singapore through a partnership in Singapore.

4 As a consequence of this enhancement, the need to meet the conditions stipulated under sections 13(9)(a) to (c) of the ITA for tax exemption of the specified foreign income received in Singapore on or after 1st January 2004 would therefore be applicable only to:

a) resident persons other than individuals; and

b) resident individuals receiving the specified foreign income through a partnership in Singapore.

5 For the persons referred to in the paragraph above (hereinafter referred to as "the specified taxpayers") receiving the specified foreign income from a foreign jurisdiction with a headline tax rate of 15% or more, the subject to tax condition is not satisfied if -

a) no tax is imposed by that foreign jurisdiction on the specified foreign income; and

b) in the case where the specified foreign income is a dividend, no tax is imposed by the foreign jurisdiction on both the dividend itself and the income out of which the dividend is paid.

6 One situation where the specified foreign income is not subjected to tax in the foreign jurisdiction from which the income is received is where exemption from tax (whether on the specified foreign income itself, and in the case of a foreign-sourced dividend, on the income from which the dividend is paid as well) is a direct consequence of that foreign jurisdiction granting a tax incentive for carrying out substantive business activities in that jurisdiction.

NEW TAX CONCESSION

7 The Government has decided to grant a tax concession to regard the "subject to tax condition" as met for the specified foreign income which are exempt from tax (i.e. exemption from tax on the specified foreign income itself, and in the case of a foreign-sourced dividend, exemption from tax on the income from which the dividend is paid as well) in the foreign jurisdiction from which the specified foreign income is received if the exemption is a direct consequence of that foreign jurisdiction granting

a tax incentive for carrying out substantive business activities in that jurisdiction[2] (such specified foreign income is hereinafter referred to as "tax-exempt specified foreign income"). The concession[3] applies to tax-exempt specified foreign income received in Singapore by the specified taxpayers on or after today.

8 The introduction of this tax concession is to better achieve the policy objective of encouraging and facilitating remittance of foreign-sourced income to Singapore, as well as to make Singapore a more attractive business hub.

9 To enjoy this tax concession, the specified taxpayers receiving tax-exempt specified foreign income need to submit the following documents together with their income tax returns:

a) A declaration[4] that the specified foreign income received by them in Singapore is exempt from tax in the foreign jurisdiction from which it is received, as a direct consequence of that foreign jurisdiction granting a tax incentive for carrying out substantive business activities in that jurisdiction; and

b) A copy of the tax incentive certificate/approval letter issued by the foreign jurisdiction in respect of the tax incentive granted for carrying out substantive business activities from which the specified foreign income is derived. In the case of a foreign-sourced dividend, a dividend voucher if available (instead of the tax incentive certificate/approval letter), which states that the dividend is exempt from tax in the foreign jurisdiction due to the granting of a tax incentive to the payer company by the foreign jurisdiction for carrying out substantive business activities in that foreign jurisdiction, will suffice.

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[2] It is a question of fact whether or not the specified foreign income is exempt from tax as a direct consequence of the foreign jurisdiction granting a tax incentive for carrying out substantive business activities in that jurisdiction. Generally, substantive business activities refer to business activities that (a) are carried out through staff with certain expertise (e.g. managing directors, chief financial officers, researchers involved in R&D projects, factory managers, traders etc), and (b) actual expenditure is incurred to carry out the activities. If not for the tax incentive granted by the foreign jurisdiction for carrying out the substantive business activities in that foreign jurisdiction, such specified foreign income should have been subjected to tax in the foreign jurisdiction.

[3] Where the conditions under section 13(9) cannot be met and this tax concession is not applicable, tax exemption under section 13(12) continues to be available. Applications for tax exemption under section 13(12) can be made in writing, with full facts and relevant details, to the Ministry of Finance for consideration.

[4] The Comptroller of Income Tax may, if he thinks fit, request for the submission of other documentary evidence or records for the verification of the accuracy of this declaration.

CLARIFICATION ON WHAT IS A FIXED PLACE OF OPERATION FOR THE PURPOSES OF GRANTING TAX EXEMPTION ON FOREIGN-SOURCED SERVICE INCOME

10 In paragraph 9 of the main circular, it was stated that service income is considered foreign-sourced if the service is rendered in the course of a person's trade, business or profession, through a fixed place of operation in a foreign jurisdiction. Enquiries have been received on what is considered a fixed place of operation for the purpose of granting tax exemption on foreign-sourced service income.

11 It is hereby clarified that for the said purpose, a fixed place of operation refers to a place of management, an office, or a certain amount of floor space (hereinafter referred to as "premises or facility") at the disposal of a person carrying on a trade, business or profession of rendering services through which he or his employees perform the activities that produce the profits of his trade, business or profession in the rendering of services. Such a place must also have features of permanence[5] i.e. it is not of a temporary nature, but should be at the disposal of the person on an on-going basis and is being used regularly by the person to carry on his trade, business or profession of rendering services. A place of operation where only activities that are auxiliary or preparatory in character are performed does not qualify as a fixed place of operation.

12 It should be noted that the mere presence of a person in a particular location does not necessarily mean that the premises or facility is at the disposal of the person. For example, the regular visits by a person to a major customer to render audit services at the premises of the major customer does not cause the major customer's premises to constitute premises at the person's disposal for the purpose of his profession. Therefore, the major customer's premises in such a case does not constitute a fixed place of operation of that person.

13 Examples of whether a place of operation is considered a "fixed place of operation" are as follows:

(a) <u>Example A</u>
For a Singapore engineering firm that rents an office in country A merely for the purpose of supplying information regarding the firm's expertise, it cannot be considered as having a fixed place of operation in country A. This is because such services rendered through the rented office in country A are services that are preparatory or auxiliary in character.

(b) <u>Example B</u>
For a Singapore law firm that rents an office on a temporary basis in country B for the purpose of facilitating the carrying out of detailed research and study in relation to the only case the firm is appearing before a court in country B, it cannot be considered as having a fixed place of operation in country B. This is because the rented office is of a temporary nature.

[5] Whether the premise or facility that is at the person's disposal has features of permanence is a question of fact.

(c) Example C

For a Singapore architect firm with a rented office in country C, housing a team of architects and employees employed from country C to undertake one project after another on an on-going basis, it can be considered as having a fixed place of operation in country C. This is because the office that is maintained at the disposal of the Singapore architect firm has features of permanence (i.e. a team of employees and undertaking of projects on a long term basis).

ENQUIRIES

14 Enquiries on the contents of this circular may be directed to IRAS at:

(a) 1800-3568622 (Corporate); or

(b) 1800-3568611 (Individual).

Inland Revenue Authority of Singapore