

IRAS e-Tax Guide

**Income Tax:
Tax Exemption under Section 13(12)
for Specified Scenarios and
Real Estate Investment Trusts
(Fourth Edition)**



INLAND REVENUE
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[Added a new paragraph after scenario E in paragraph 5 and made editorial amendments to paragraphs 1, 4, 5 and 6 to 9. Also updated the scenarios A and B and added a new scenario C in Annex 1.]

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[Added a new paragraph 8 to incorporate the expiry date of the foreign income tax exemption scheme for S-REIT, as announced in Budget Statement 2010, and renumbered the subsequent paragraphs accordingly.]

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Table of Contents

INTRODUCTION.....	2
SPECIFIED FOREIGN INCOME THAT DOES NOT QUALIFY FOR TAX	
EXEMPTION UNDER SECTION 13(8)	3
S-REITs	6
OFFSHORE QUALIFYING INFRASTRUCTURE PROJECT/ASSET.....	8
OTHER SCENARIOS	9
APPLICATION PROCESS	10
CONTACT INFORMATION	10
ANNEX 1: EXAMPLES OF SPECIFIED SCENARIOS.....	11
ANNEX 2: EXAMPLES OF STRUCTURES THROUGH WHICH REIT FOREIGN INCOME ARE RECEIVED IN SINGAPORE	14

TAX EXEMPTION UNDER SECTION 13(12) FOR SPECIFIED SCENARIOS AND REAL ESTATE INVESTMENT TRUSTS

INTRODUCTION

- 1 PM and Minister for Finance announced in his Budget Statement 2006 that:
- a) Companies engaged in substantive business activities¹ overseas that remit their foreign-sourced dividend, foreign branch profits and foreign-sourced service income (hereinafter referred to as “specified foreign income”) to Singapore but are unable to meet the conditions for tax exemption under section 13(8)² of the Singapore Income Tax Act [“ITA”] will be granted tax exemption under section 13(12) of the ITA if they remit their specified foreign income under specific scenarios and satisfy the qualifying conditions; and
 - b) Real Estate Investment Trusts listed on SGX (“S-REITs”) or wholly owned Singapore subsidiary companies of S-REITs will, subject to qualifying conditions being satisfied, enjoy tax exemption under section 13(12) of the ITA on their –
 - i) foreign-sourced dividends that do not qualify for section 13(8) tax exemption,
 - ii) foreign-sourced interest, and
 - iii) distributions by a non-resident trustee of a trust paid out of income/gains derived from ownership of foreign properties, property related activities or other activities permitted under the regulatory framework for S-REITs

The above-mentioned incomes are hereinafter referred to as “S-REIT foreign income”.

2 This circular sets out the specific scenarios. It also lists the qualifying conditions to be satisfied by companies in any of the scenarios or by S-REITs/ Singapore subsidiary companies of S-REITs in order to enjoy tax exemption under section 13(12) of the ITA on their income stated in paragraph 1 above.

¹ 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.

² The main conditions to be satisfied to enjoy tax exemption under section 13(8) for foreign-sourced dividend, foreign branch profits and foreign-sourced service income (hereinafter referred to as “the specified foreign income”) are namely –

- a) the specified foreign income must have been subjected to tax in the foreign jurisdiction from which the income is received [section 13(9)(a) of the ITA]; and
- 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] . For more details, please refer to IRAS circular dated 21st May 2003, and supplementary circulars dated 30th July 2004 and 31st May 2006.

3 On 16th September 2006, a package of tax incentives to catalyse the growth of the project finance industry was announced. The incentives include tax exemption on foreign-sourced interest from an offshore qualifying infrastructure project/asset. This circular also lists the qualifying conditions to be satisfied by Singapore listed entities/wholly-owned Singapore subsidiary companies of the listed entities in order to enjoy tax exemption under section 13(12) of the ITA on the above income.

SPECIFIED FOREIGN INCOME THAT DOES NOT QUALIFY FOR TAX EXEMPTION UNDER SECTION 13(8)

4 For specified foreign income that does not qualify for tax exemption under section 13(8) but is to be received in Singapore under any of the scenarios listed in paragraph 5, section 13(12) tax exemption will be granted, on application to IRAS, if the qualifying conditions set out in paragraph 6 are met.

5 The scenarios are as follows:

(A) Where the specified foreign income received in Singapore originated in the foreign tax jurisdiction from which the income is received, and that tax jurisdiction has a headline tax rate of at least 15%, but no tax was paid in that tax jurisdiction because:

a) Dividend

the foreign-sourced dividend was paid out of –

- i) capital gains which were not subject to tax in that tax jurisdiction;
- ii) underlying profits derived from carrying out substantive business activities in that tax jurisdiction but was not subject to tax due to –
 - aa) set-off of unutilised losses or capital allowances, or
 - bb) the rules under a consolidation regime of that tax jurisdiction;

b) Branch profits

the branch profits were not subject to tax in that tax jurisdiction because –

- i) the profits were capital gains which are not subject to tax in that tax jurisdiction; or
- ii) of set-off of unutilised losses or capital allowances.

c) Service income

the service income was not subject to tax in that tax jurisdiction due to set-off of unutilised losses or capital allowances.

(B) Where –

- a) the specified foreign income received in Singapore originated from carrying out substantive business activities in the foreign tax jurisdiction from which the income is received,
- b) tax was paid in that tax jurisdiction,
- c) that tax jurisdiction has a headline tax rate of *lower than 15%*,
- d) that tax jurisdiction is a party to an Avoidance of Double Taxation Agreement (DTA) concluded and signed with Singapore but pending ratification i.e. has not been effected in law, and
- e) when ratified, the DTA provides for exemption of tax on specified foreign income.

(C) Where –

- a) the specified foreign income received in Singapore originated from carrying out substantive business activities in the foreign tax jurisdiction from which the income is received,
- b) that tax jurisdiction has a headline tax rate of *lower than 15%*,
- c) that tax jurisdiction is a party to a DTA concluded and signed with Singapore but pending ratification i.e. has not been effected in law,
- d) when ratified, the DTA provides for exemption of tax on specified foreign income, and
- e) no tax was paid in that jurisdiction because:

(I) Dividend

the foreign-sourced dividend was paid out of –

- i) capital gains which were not subject to tax in that tax jurisdiction;
- ii) underlying profits derived from carrying out substantive business activities in that tax jurisdiction but was not subject to tax due to –
 - aa) set-off of unutilised losses or capital allowances,
 - bb) the rules under a consolidation regime of that tax jurisdiction, or
 - cc) the foreign tax jurisdiction granting tax incentive for carrying out substantive activities in that tax jurisdiction.

(II) Branch profits

the branch profits were not subject to tax in that tax jurisdiction because –

- i) the profits were capital gains which are not subject to tax in that tax jurisdiction,
- ii) of set-off of unutilised losses or capital allowances, or
- iii) the foreign tax jurisdiction granting tax incentive for carrying out substantive activities in that tax jurisdiction.

(III) Service income

the service income was not subject to tax in that tax jurisdiction due to:

- i) set-off of unutilised losses or capital allowances, or
- ii) the foreign tax jurisdiction granting tax incentive for carrying out substantive activities in that tax jurisdiction.

(D) Where the specified foreign income received in Singapore originated from carrying out substantive business activities in a foreign tax jurisdiction (say country A) with headline tax rate of at least 15% and tax was paid in this jurisdiction, but was moved to or invested in another foreign tax jurisdiction(s) [say country B and then country C] that did not levy any tax on such income before or when the income was remitted back to Singapore from the other tax jurisdiction (i.e. country C).

(E) Where the foreign-sourced dividend received in Singapore was paid out of income that did not originate in the foreign tax jurisdiction from which the dividend income was received (say country A), but out of income that originated from carrying out substantive business activities in another foreign tax jurisdiction that has a headline tax rate of at least 15% (say country E) and tax was paid on the originating income in country E. Dividend was paid out of the originating profit to another company in another foreign tax jurisdiction (say country D) that in turn paid dividend to another company in yet another foreign tax jurisdiction, and so on (say countries C and B) before being used to pay dividend to the payer company in country A.

This scenario also covers a case where the company carries out substantive business activities in the foreign country (i.e. country E) through a branch instead of its subsidiary there. For example, the company in country D carries out substantive activities through a branch in country E and receives remittance of branch profits. Scenario C of example 3 in Annex 1 illustrates this.

(F) Where the foreign-sourced dividend received in Singapore was paid out of income that did not originate in the foreign tax jurisdiction from which the dividend income was received (say country A), but out of originating profit derived from carrying out substantive business activities in another foreign tax jurisdiction that has a headline tax rate of at least 15% (say country E). Dividend was paid out of the originating profit to another company in another foreign tax jurisdiction (say country D) which in turn paid dividend to another company in yet another foreign tax jurisdiction, and so on (say countries C and B) before being used to pay dividend to payer company in country A. No tax was paid on this income in all these foreign tax jurisdictions (i.e. countries A to E) as:

- a) the originating profit was not subject to tax in country E because -
 - i) it was a capital gain; or

- ii) of set-off of unutilised losses or capital allowances, or
- iii) of the rules under a consolidation regime of country E, or
- iv) it was exempt from tax as a consequence of country E granting tax incentive for carrying out substantive activities in country E;

and

- b) the dividend received in country A, B, C and D which was paid out of the originating profit from carrying out substantive business activities (and thereafter used to pay the foreign-sourced dividend received in Singapore) was not subject to tax in countries A, B, C and D respectively due to -
 - i) the participation exemption regime of country A, B, C or D; or
 - ii) the tax system of country A, B, C or D not taxing foreign-sourced dividend received in country A, B, C or D respectively.

Annex 1 shows some examples of such scenarios.

6 Tax exemption under section 13(12) will be granted for specified foreign income to be received in Singapore if the taxpayer is able to track the source of income and if CIT is satisfied that there is no round tripping of locally-sourced income via the overseas investment, and the taxpayer in Singapore receiving the specified foreign income is not a shell company. For the tax exemption to apply, applications for tax exemption under section 13(12) for any specified foreign income must be made before the income is received in Singapore.

S-REITs

7 S-REITs may own foreign properties directly or indirectly through companies/ foreign trusts. For S-REIT foreign income, tax exemption under section 13(12) will be granted to S-REITs or their wholly owned Singapore subsidiary company (if the Singapore subsidiary company is the entity receiving the S-REIT foreign income) if the qualifying conditions listed in the table below are met.

S/N	Foreign-sourced dividend / trust distributions by foreign trusts	Foreign-sourced interest
a)	The entity from which the income originates hold overseas properties, or engage in property related activities or in such other activities in line with the regulatory requirements imposed on S-REIT, in a foreign tax jurisdiction with headline tax rate of at least 15%	Same
b)	Dividend/trust distribution must originate from such entity constituted to hold/own property and the entity derives the following	Not applicable

S/N	Foreign-sourced dividend / trust distributions by foreign trusts	Foreign-sourced interest
	<ul style="list-style-type: none"> i) Property rental income from underlying overseas property; or ii) Capital gains from divestment of overseas property or from divestment of special purpose vehicle that holds overseas property, or iii) Income derived from property related activities or such other activities in line with the regulatory requirements imposed on S-REIT. 	
c)	In respect of property rental income, tax must have been paid in the foreign tax jurisdiction in which the property is situated;	Tax must have been paid in the foreign tax jurisdiction on the interest income. Where there is no foreign tax paid on the interest income, the interest must be incurred on borrowings by the payer to acquire the underlying overseas properties and the income and/or capital gains from such properties are subject to tax in the foreign tax jurisdiction unless tax incentives apply to exempt them.
d)	<p>Funds channelled out of Singapore to finance the investment in the entity [specified in (a)] must originate from the following sources:</p> <ul style="list-style-type: none"> i) Funds received by S-REIT from issue of its units; ii) Permissible borrowings under the Property Trust Fund guidelines; iii) Security deposits from tenants or properties owned by the S-REIT; or iv) Undistributed income of the S-REIT. 	<p>Funds channelled out of Singapore to finance the loan to the entity [specified in (a)] must originate from the following sources:</p> <ul style="list-style-type: none"> i) Funds received by S-REIT from issue of its units; ii) Permissible borrowings under the Property Trust Fund guidelines; iii) Security deposits from tenants or properties owned by the S-REIT; or iv) Undistributed income of the S-REIT.
e)	There is no round tripping of locally-sourced income via the overseas investment and there is no setting up of artificial structure (e.g. incorporation of a shell company in Singapore) to avoid Singapore tax.	Same
f)	Where an application of section 13(12) tax exemption is made by a wholly owned Singapore subsidiary company of an S-REIT,	Same

S/N	Foreign-sourced dividend / trust distributions by foreign trusts	Foreign-sourced interest
	the full amount of the remitted income less incidental expenses associated with the remittance must be passed through to the S-REIT.	

Annex 2 shows examples of two structures through which an S-REIT or its wholly owned Singapore subsidiary company could receive S-REIT foreign income in Singapore, that will be considered for section 13(12) tax exemption.

8 As announced in the Budget Statement 2010, the foreign income exemption scheme for S-REIT shall expire on 31 Mar 2015. Accordingly, S-REIT foreign income received in Singapore by an S-REIT or its wholly owned Singapore subsidiary after 31 Mar 2015 shall not enjoy tax exemption, unless the scheme is extended.

OFFSHORE QUALIFYING INFRASTRUCTURE PROJECT/ASSET

9 Resident entities which are listed in Singapore may derive foreign-sourced interest income from an offshore qualifying infrastructure project/asset directly or indirectly. Tax exemption under section 13(12) will be granted to such entities or their wholly-owned Singapore subsidiary company (if the Singapore subsidiary company is the entity receiving the qualifying foreign-sourced interest income) if the entities or their respective wholly-owned Singapore subsidiary company are approved for the purpose of the tax exemption (“approved entities”) and the following conditions are met:

- a) the entity from which the interest originates is in a foreign tax jurisdiction with a headline tax rate of at least 15%;
- b) tax must have been paid in the foreign tax jurisdiction on the interest income. Where there is no foreign tax paid on the interest income, the interest must be incurred by the payer in respect of the underlying offshore qualifying infrastructure project/asset that has been used by the payer in the production of income and such income is subject to tax in the foreign tax jurisdiction unless tax incentives apply to exempt the income. For this purpose, a qualifying infrastructure project/asset is a new investment made by any approved entities in the following areas:
 - (i) electricity generation, distribution, transmission and/or alternative energy generation;
 - (ii) gas distribution, transmission and/or generation;
 - (iii) waste management including waste treatment and incineration plants;
 - (iv) roads, rail infrastructure;

- (v) ports (sea and air) and/or terminals;
 - (vi) broadcasting and/or communication facilities and/or networks;
 - (vii) telecom facilities and/or networks;
 - (viii) water treatment (including desalination) and/or distribution;
 - (ix) hospitals and/or clinics;
 - (x) schools including tertiary institutions; and
 - (xi) such other areas as may be approved by the Minister or such person as he may appoint;
- c) there is no round tripping of locally sourced income via the overseas investment and there is no setting up of an artificial structures (e.g. incorporation of a shell company in Singapore) to avoid Singapore tax;
 - d) where an application of section 13(12) tax exemption is made by a wholly owned Singapore subsidiary company of a Singapore listed entity, the full amount of the remitted income less incidental expenses associated with the remittance must be passed through to the Singapore listed entity; and
 - e) the ownership of or investment in the offshore qualifying infrastructure project/ asset is substantially advised³ in Singapore.

OTHER SCENARIOS

10 Any taxpayer receiving specified foreign income or S-REIT foreign income from outside Singapore but is not in any of the scenarios covered in this circular can still make an application for section 13(12) tax exemption, stating why the application should merit favourable consideration. Tax exemption under section 13(12) of the ITA may be granted if it is determined that the impending repatriation of the specified foreign income or S-REIT foreign income by such a taxpayer would generate economic benefits for Singapore.

³ Substantially advised is defined as:

- (1) where the project is advised and structured by a Financial Sector Incentive-project Finance (FSI-PF) company; or
- (2) where the project is not advised by a FSI-PF company but by a financial institution in Singapore, the Singapore-based staff of the financial institution have a leading and substantial role in advising and structuring the investment.

APPLICATION PROCESS

11 With effect from the date of this circular, all applications for tax exemption under section 13(12) are to be made to IRAS (Tax Policy & Ruling Branch), 55 Newton Road, Singapore 307987 using the application form that is downloadable from our homepage at www.iras.gov.sg.

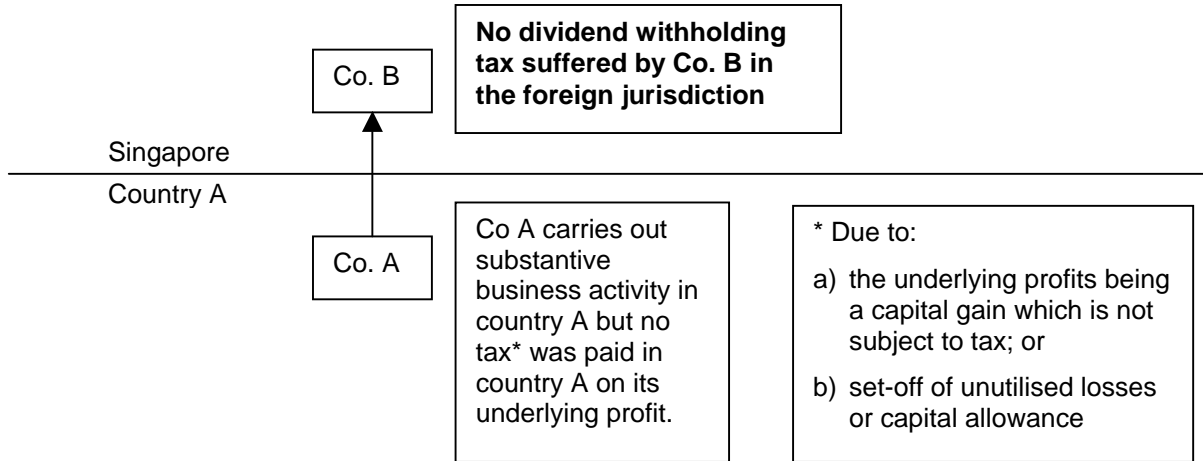
CONTACT INFORMATION

12 Enquiries on the contents of this circular may be directed to IRAS at 6351-2125.

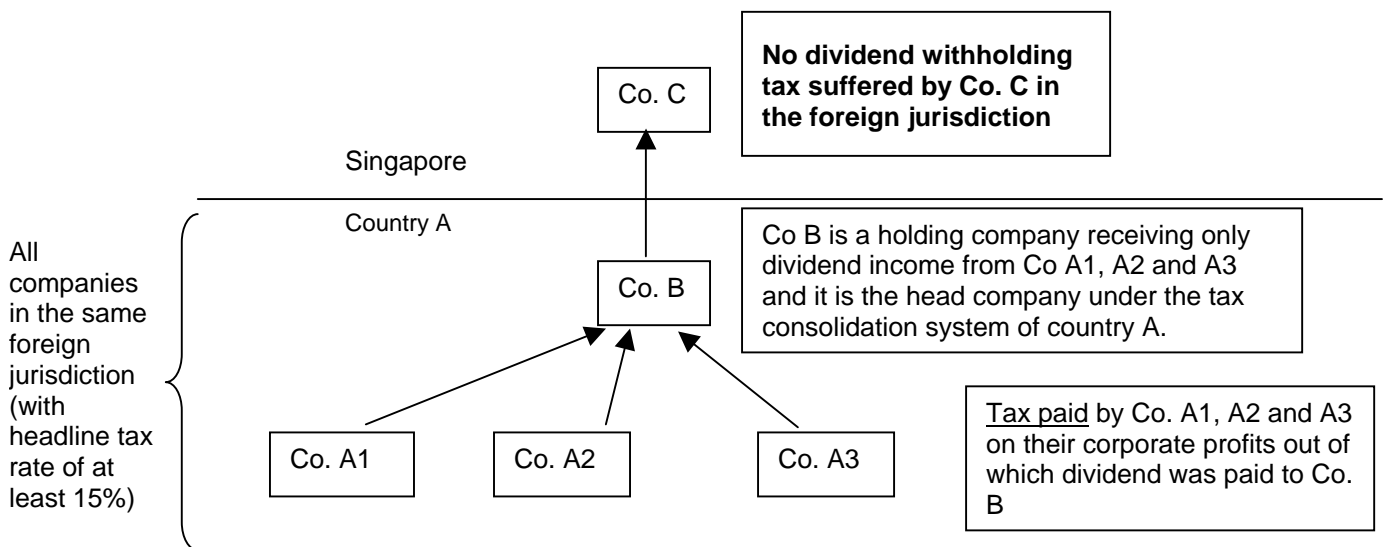
Inland Revenue Authority of Singapore

ANNEX 1: EXAMPLES OF SPECIFIED SCENARIOS

Example 1 – Where foreign tax jurisdiction from which specified foreign income was received has a headline tax rate of at least 15% and no tax was paid in that tax jurisdiction

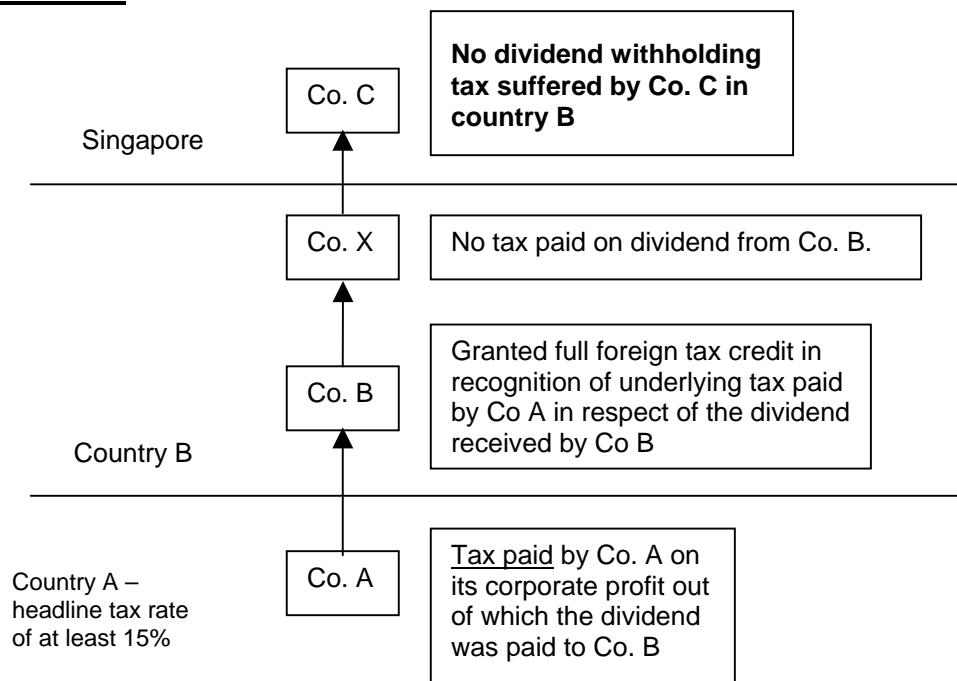


Example 2 – Where foreign-sourced dividend is received from a head company of a group of companies operating in a foreign tax jurisdiction with headline tax rate of at least 15% and a tax consolidation system

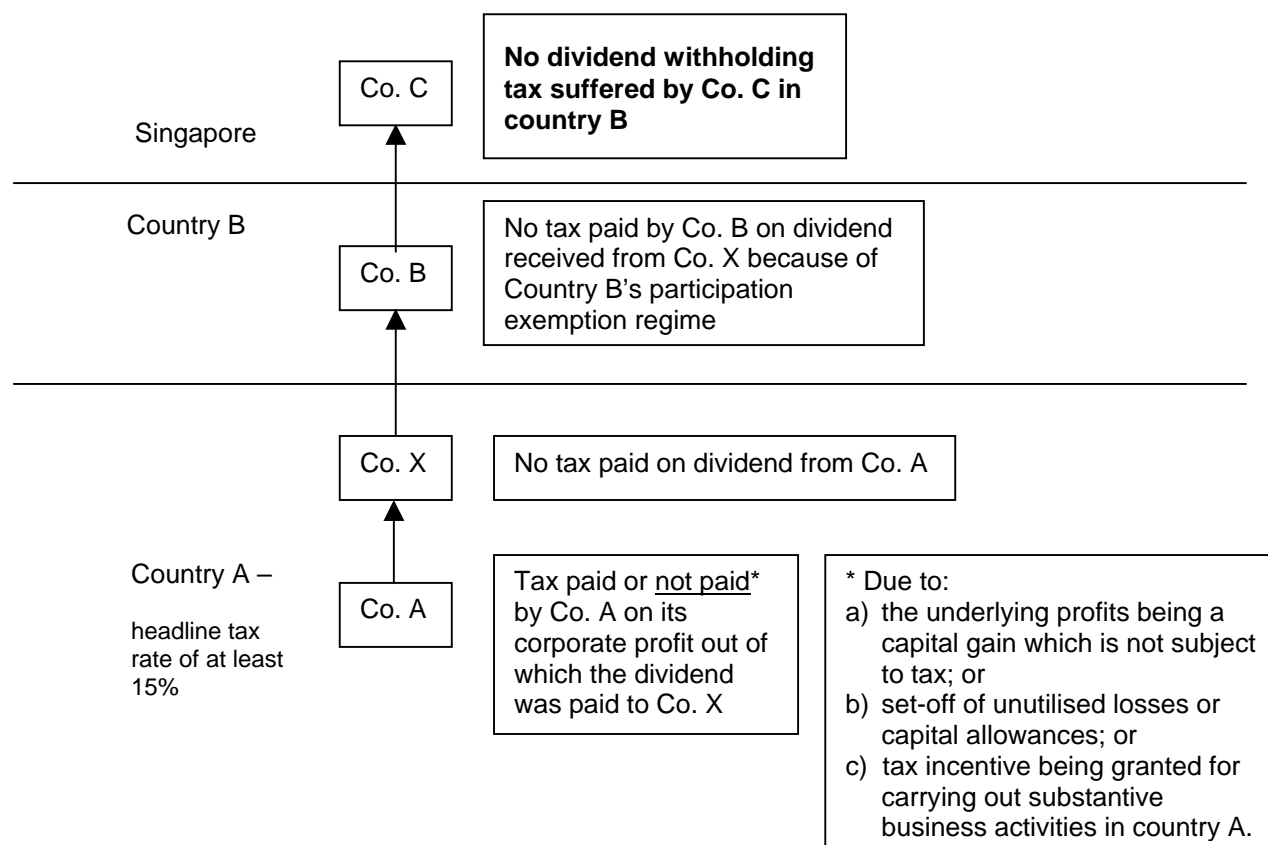


Example 3 – Where dividend was originally paid out of underlying income derived from substantive business activities carried out in another foreign tax jurisdiction with a headline tax rate of at least 15%

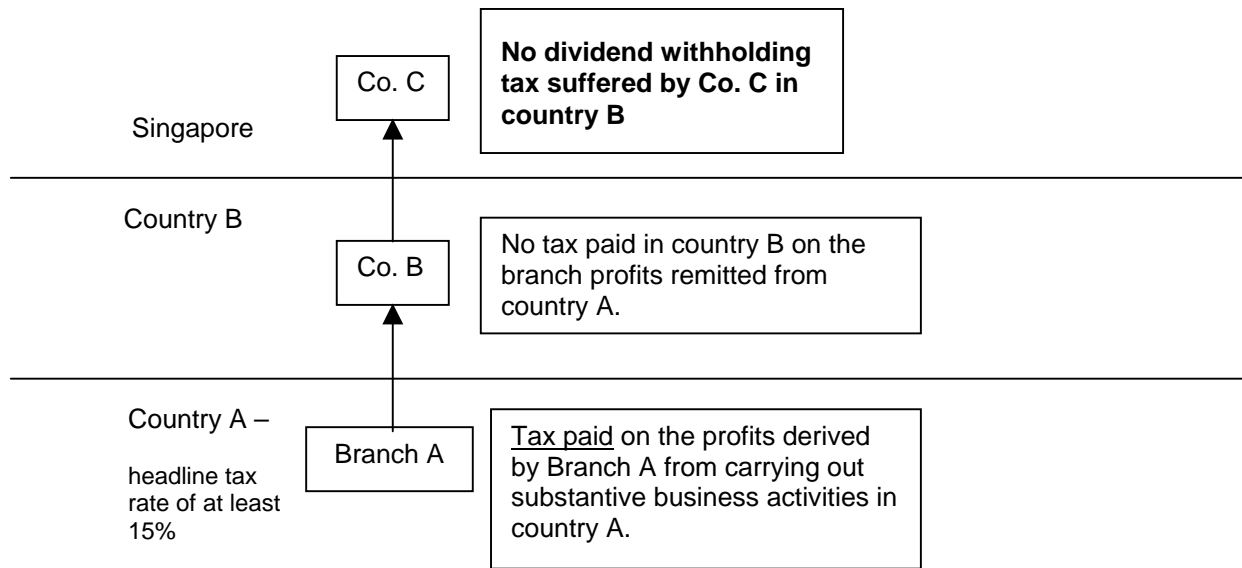
Scenario A



Scenario B

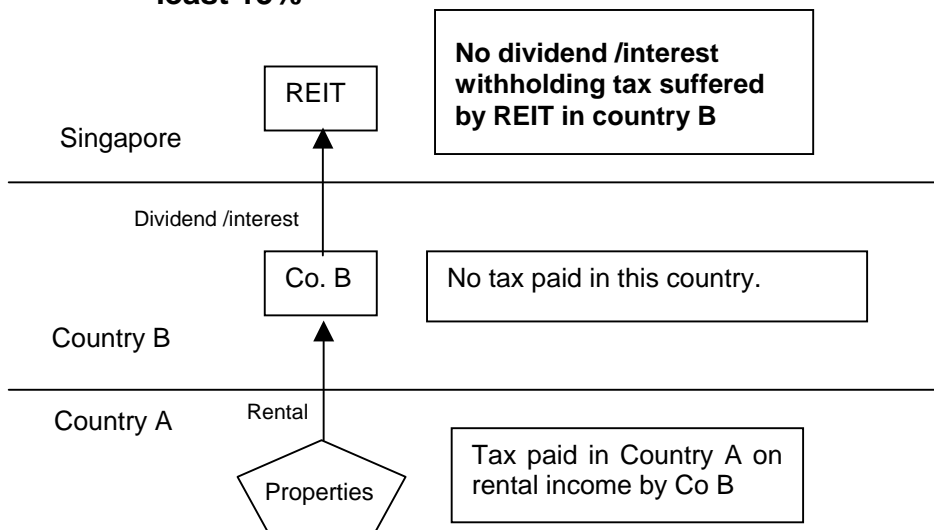


Scenario C



ANNEX 2: EXAMPLES OF STRUCTURES THROUGH WHICH REIT FOREIGN INCOME ARE RECEIVED IN SINGAPORE

Example 1 – Where REIT received dividends/interest from its foreign subsidiary companies that paid such income out of rental/capital gains derived from renting out/sale of properties situated in foreign tax jurisdiction with headline tax rate of at least 15%



Example 2 – Where REIT’s Singapore subsidiary company received dividend/interest from its overseas subsidiary companies that paid such income out of rental/capital gains derived from renting out/sale of properties situated in foreign tax jurisdictions with headline tax rate of at least 15%

