

# **IRAS e-Tax Guide**

## **Section 10(25) Of The Singapore Income Tax Act - Interpretation And Practice (Third Edition)**



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## Section 10(25) of the Singapore Income Tax Act – Interpretation and Practice

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### Introduction

- 1 Under section 10(1) of the Singapore Income Tax Act (SITA), the income of any person accruing in or derived from Singapore or received in Singapore from outside Singapore shall be liable to tax in Singapore unless such income has otherwise been exempt from tax under the SITA. The interpretation of the phrase “income received in Singapore from outside Singapore” has for some time, been a subject of contention between some taxpayers and the Comptroller. This causes uncertainty to taxpayers and in some cases, have led to unnecessary disputes between the taxpayers and the Comptroller.
- 2 To provide greater clarity of the law to taxpayers, the SITA had been amended in 1995 to make clear the circumstances under which income derived from outside Singapore constitute income received in Singapore for the purposes of section 10. This amendment was effected in the Income Tax (Amendment) Act 1995 with the insertion of new subsection 13<sup>1</sup> to section 10 to provide the necessary clarification. With this clarification, taxpayers will find it simpler to comply with the tax law.
- 3 Basically, section 10(25) seeks to clarify that the following amounts shall be income received in Singapore from outside Singapore whether or not the source from which the income is derived has ceased:
  - (a) any amount from any income derived from outside Singapore which is remitted to, transmitted or brought into Singapore [i.e. section 10(25)(a)];
  - (b) any amount from any income derived from outside Singapore which is applied in or towards satisfaction of any debt incurred in respect of a trade or business carried on in Singapore [i.e. section 10(25)(b)]; and
  - (c) any amount from any income derived from outside Singapore which is applied to purchase any movable property which is brought into Singapore [i.e. section 10(25)(c)].
- 4 As in most instances when new provisions of the legislation are enacted, there are always concerns as to the possible unintended consequences which can arise when applying the new provisions to various situations. IRAS had, therefore, received enquiries and feedback from various quarters concerning the effects of section 10(25) since the Income Tax (Amendments) Bill 1995 was gazetted on 7 August 1995. IRAS also met with professional bodies and trade associations to explain the amendment and to explore avenues for addressing concerns which their members may have on section 10(25).
- 5 Having taken all the views into consideration, MOF and IRAS felt that the concerns highlighted were largely due to a misreading of the intention of the amendment. In addition, the problems anticipated to arise with the enactment of section 10(25) could be adequately dealt with through administrative measures to ensure that there will be no unintended outcome. MOF has, therefore, agreed for IRAS to adopt a set of administrative practice and interpretation when administering the provisions of section 10(25).

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<sup>1</sup> Section 10(13) was renumbered as section 10(25) [ SITA, 2004, 2008 Edition]

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- 6 This e-Tax Guide is intended to set out the administrative practice and interpretation which IRAS will adopt when administering the provisions of section 10(25).

### Administrative Practice

- 7 To address the concerns raised on section 10(25), the following administrative practice and interpretation will be adopted by IRAS when administering the provisions of section 10(25):
- (a) Generally, section 10(25) will be applied to tax foreign income received in Singapore only if the income belongs to an individual who is resident in Singapore or an entity which is located in Singapore. This is in fact no different from the treatment of foreign income received in Singapore prior to the introduction of section 10(25). With this interpretation, nonresident individuals and foreign businesses which are not operating in or from Singapore can bring their foreign income to Singapore without fear of being taxed on the income. This, therefore, removes the concern that section 10(25) will discourage foreigners and foreign businesses from using Singapore's banking and fund management facilities;
  - (b) As an administrative concession, section 10(25) will not be applied to tax the foreign income received in Singapore by individuals who migrate to Singapore where it can be shown that the foreign income received after such individuals take up residence in Singapore was earned prior to their relocation to Singapore. With this concession, foreigners who decide to relocate will not find themselves disadvantaged in anyway as a result of that decision;
  - (c) As an administrative concession, foreign income which is applied towards additional investments overseas without being repatriated to Singapore will not be treated as having been received in Singapore under section 10(25) at the point of reinvestment. With this concession, section 10(25)(b) will principally close loopholes where taxpayers seek to avoid tax on their foreign income by using it overseas to discharge any indebtedness or liabilities incurred for the purpose of any trade or business carried on in Singapore. This concession is in line with Government's efforts in promoting regionalisation of Singapore's businesses;
  - (d) Where taxpayers with funds outside Singapore derived from both foreign income and other non-income sources wish to remit the non-income funds only, IRAS will, as an administrative concession, be prepared to accept such claims. For such claims to be accepted, the taxpayer will have to provide an account of the funds from income and non-income sources on the date before repatriation and demonstrate that after the repatriation, the funds remaining outside Singapore is no less than the amount from income sources which have yet to be repatriated. Alternatively, the taxpayer can demonstrate that the amount repatriated is not more than the capital sent out

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net of any losses incurred on capital account. This will greatly reduce the administrative burden of taxpayers to track and demonstrate that the funds repatriated are from non-income source. In addition, it is recognised that businesses may sometimes make profits from certain overseas projects and losses on others. For the purpose of determining the amount of foreign income which has been derived overseas, IRAS will, as an administrative concession, allow losses incurred overseas on revenue account to be offset against the foreign income derived;

- (e) Technically, as the provisions of section 10(25) do not have an effective date, they are applicable even to transactions which took place prior to the amendment. However, as it is not the intention to reopen cases where agreement has already been reached on the issues involved, IRAS will adopt the following interpretation on the operative dates of the provisions of section 10(25):
- (i) Section 10(25)(a) will be applied to all assessments where the issue pertaining to receipt of foreign income has yet to be agreed on the date the Income Tax (Amendment) Bill 1995 was introduced in Parliament (i.e. 7 August 1995);
  - (ii) Section 10(25)(b) and (c) will be applied to transactions which are effected after 7 August 1995. For example, equipment which was bought using foreign income on or before 7 August 1995 will not be caught by the provisions of section 10(25).

- 8** The above statements on the practice and interpretation to be adopted by IRAS on section 10(25) are intended to address all concerns raised on section 10(25) which, from the policy point of view, may give rise to unintended negative consequences.
- 9** Besides the above, IRAS has also received a number of enquiries from taxpayers concerning the amount of foreign-sourced income which is liable to Singapore tax in situations where the provisions of section 10(25)(c) are applicable (i.e. where foreign-sourced income is applied to purchase any movable property which is brought into Singapore). In such cases, the amount of income received by taxpayers and hence liable to tax in Singapore is the amount of foreign income which is applied to acquire the assets and not their net book value or market value at the time they were brought into Singapore.
- 10** To summarise, section 10(25) seeks to provide taxpayers with greater clarity of the law concerning the taxability of foreign-sourced income by clarifying the meaning of “income received in Singapore from outside Singapore”. This removes the uncertainties which taxpayers may previously face in this area and facilitates them to comply with the tax law. The clarification will also help to prevent unnecessary and costly disputes between taxpayers and the Comptroller. Accordingly, section 10(25) does not change the current remittance basis of taxation for foreign-sourced income. Taxpayers who are subject to tax on foreign-sourced income shall also continue to be entitled to claim tax reliefs or credits available under section 50, 50A or 50B of the SITA in respect of the foreign tax paid or payable on such income.

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- 11 Taxpayers who have any enquiries concerning the administrative practice and interpretation outlined above may call IRAS at 1800-3568622 for clarification.

### Updates and Amendments

	<b>Date of amendment</b>	<b>Amendments made</b>
1	15 March 2005	<ul style="list-style-type: none"><li>• Renumbered the sections quoted in the circular with reference to the Income Tax Act (Revised Edition 2004)</li></ul>
2	5 December 2011	<ul style="list-style-type: none"><li>• Amended paragraph 7(c) to clarify that foreign income is considered remitted to Singapore when it is applied to discharge any indebtedness or liabilities incurred for the purpose of any trade or business carried on in Singapore.</li></ul>