



INLAND REVENUE
AUTHORITY
OF SINGAPORE

Income Tax Guide on E-Commerce

This guide is meant to assist businesses in understanding the Income Tax treatment on E-Commerce.

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1 Introduction

- 1.1 This guide on *Income Tax on Electronic Commerce* is in a series of guides specially prepared to assist you in understanding the income tax treatment for electronic commerce (EC) transactions. You should read this guide together with the Income Tax Act and the Subsidiary Legislation.
- 1.2 This guide deals with the situations where income from EC transactions is considered as sourced in Singapore in which she has a right to tax. It is intended to provide a broad understanding of how the current income tax law and principles would apply to taxing of income from EC in Singapore.
- 1.3 We will be continuously reviewing the tax treatment and law as they apply to EC. As and when an issue has been reviewed, and if the need arises, a guide will be issued to clarify the current thinking and tax position.

2 Income Tax Overview

- 2.1 How is income from EC transactions taxed in Singapore?
 - 2.1.1 Income Tax is a tax on income. There are no separate provisions within the income tax laws that deal only with EC. Therefore, where relevant, current tax laws and interpretations would be applied to EC transactions.
 - 2.1.2 The current basis of taxation is a territorial one i.e. tax is imposed on the income accruing in or derived from Singapore or received in Singapore from outside Singapore.
 - 2.1.3 The broad principle of “operations test” is used to determine whether the income is derived in Singapore so as to be liable to tax in Singapore. If the business operations are carried out in Singapore, then income derived from those operations is usually said to be sourced in Singapore and thus liable to tax here. Whether business operations are carried out in Singapore is largely a question of fact and degree.
 - 2.1.4 In the case of EC, especially if the company is involved in mainly intangible goods and services, it may be difficult to apply the usual operations test to determine whether the income from the EC is derived in Singapore. There may be a need to determine each case on its business model and extent of operations. Nonetheless, some basic business models are examined below, so as to provide some guidance on the circumstances under which income from EC would be deemed as sourced in Singapore and subject to tax.



3 Terminology and scope

3.1 In this guide, the term “website” is used broadly to encompass the infrastructure that enables EC to take place. It can be simply the website of a company, a website of links or a portal offering a range of services.

3.2 In this guide, a “server” is considered to be a device upon which EC applications may be sited or run from to allow EC to take place. A server would usually include the computer hardware and its operating and basic application software.

3.3 Models of Operation

3.3.1 There are numerous models through which businesses engage in EC. This guide is prepared by referencing to some common business models. These business models are not intended to be exhaustive and there can be finer differences among businesses.

3.3.2 Three basic models are examined. They are :

- a) a company whose business operations are in Singapore, derives its income from EC activities through a website hosted in Singapore **(paragraph 4)**
- b) a company whose business operations are in Singapore, derives its income from EC activities through a website and branch outside Singapore **(paragraphs 5 & 6)**
- c) a company whose business operations are outside Singapore, derives its income from EC activities through a website and branch in Singapore **(paragraphs 7 & 8).**

3.3.3 For the models mentioned under paragraphs (b) and (c) of 3.3.2, they will be separately examined in the context of tangible (physical) and intangible (online) products.

3.4 Cross-Border Transactions

3.4.1 This guide does not address the tax treatment or position that may be adopted by other countries in the case of cross-border transactions. It does not preclude the tax authority in other tax administrations from seeking to treat the income differently, resulting in possible double taxation or withholding tax. Please also see paragraph 10.



4 Company with its business operations in Singapore, sets up a website in Singapore

4.1 Assumptions

- a) Company is involved in manufacturing of both tangible and intangible products in Singapore
- b) Company hosts its website itself or with a hosting service provider in Singapore
- c) The services available through the website are to enable customers to find out about the Company's products and services, order the products, make payments for purchases and receive delivery of intangible products online. The delivery of tangible products is made through normal physical delivery channels.

4.1.1 As the business operations of the Company are carried out in Singapore, all business profits including profits from EC activities are sourced in Singapore and such profits are liable to tax in Singapore.

4.1.2 Thus, income derived from business conducted through the website would be considered as income sourced in Singapore and be subject to tax in Singapore.

5 Company with its business operations in Singapore, sets up a website in a foreign country

5.1 Tangible goods

5.1.1 Assumptions

- a) Company is involved in manufacturing of tangible products in Singapore
- b) Company does not operate a branch in a foreign country
- c) Company hosts its website with a hosting service provider in a foreign country
- d) The activities undertaken by the website are to enable customers to find out about the company's products and services, order the products, and make payments for purchases online. The delivery of products is made through normal physical delivery channels.

5.1.2 The Company completes the obligation of its EC activities largely through its operations in Singapore. The Company in Singapore provides the necessary information for the website, answers queries on its products and services,



receives due payments for purchases and delivers the products. It may even provide after-sale services. Although the website is in a foreign country, the fulfillment of the business obligations is done largely through its operations in Singapore. Therefore, such income derived from its EC business via a website hosted in a foreign country will be considered as income sourced in Singapore and is subject to tax in Singapore.

5.2 Intangible goods

5.2.1 Assumptions

Similar to above except that Company is involved in the supply of digitized intangible product (e.g. online publisher).

5.2.2 Unlike a company involved in the manufacturing of tangible goods there may be little physical operations and supporting assets and personnel in Singapore. Nonetheless, the Company completes the obligation of its EC activities largely through its operations in Singapore. The activities in Singapore may include sourcing for content, promotion and advertising efforts, and maintaining the currency of information for the website. This enables the website to perform various business functions such as, responding to queries on its products and services, receive due payments for purchases, delivering products and services as well as providing after-sale services.

5.2.3 Although the website is hosted in a foreign country, the fulfillment of the business obligations is done through its operations in Singapore. The profits arise from activities carried out largely in Singapore. Thus, the income derived from its EC transactions via the website will be considered as income sourced in Singapore and subject to tax in Singapore.

6 Company with its business operations in Singapore, sets up a website and branch in a foreign country

6.1 Tangible and intangible goods

6.1.1 Assumptions

- a) Company is involved either in manufacturing of tangible products in Singapore or the supply of intangible products.
- b) Company operates a branch and hosts a website with a hosting service provider in a foreign country.
- c) The services available through the website are to enable customers to find out about the Company's products and services, order the



products, and make payments for purchases online. The delivery of the products is made through normal physical delivery channels.

- d) The activities undertaken by the branch can be varied, from supporting the technical aspects of the website to handling and completing EC transactions.

6.1.2 The Company is liable to Singapore tax for income derived from its operations in Singapore.

6.1.3 Are the profits of the branch taxable in Singapore?

Since the branch carries out its activities largely outside Singapore, its profits so derived would be considered as sourced in the foreign country. Therefore, such profits are not liable to tax in Singapore *unless remitted back to Singapore*.

6.1.4 Would the profits arising from the transactions through the website be considered as profits of the branch?

This depends on the type and degree of the activities undertaken by the branch. (It is also dependent on the tax regulations in the foreign country.) If the branch undertakes to market and sell the company's products and services electronically as well as complete the obligations arising from the EC transactions, it would be considered as carrying on a business in EC. The business profits arising from the EC transactions through the website in that branch would be considered as profits of the branch and thus, taxable income of the branch. In such a case, the profits would not be liable to tax in Singapore *unless remitted back to Singapore*.

7 Company with its business operations outside Singapore, sets up a website in Singapore

7.1 Tangible goods

7.1.1 Assumptions

- a) Company is involved in manufacturing of tangible products in the foreign country.
- b) Company does not operate a branch in Singapore.
- c) Company hosts its website with a hosting service provider in Singapore.



- d) The services provided through the website are to enable customers to find out about the company's products and services, order the products, and make payments for purchases online. Delivery of products is made through normal physical delivery channels.
- e) The customers may or may not be from Singapore

7.1.2 The website merely facilitates the conduct of EC and the substantial part of the business activities such as manufacture of products, provision of product information for the website, completion of obligations and delivery are made from the Company outside Singapore. Most of the Company's operations are outside Singapore. Thus, the Company would not be considered as having its business operations in Singapore. The income from the EC transactions through the website is derived mainly from its operations outside Singapore. Thus, such income would not be considered as sourced in Singapore, and not subject to tax in Singapore.

7.2 Intangible goods

7.2.1 Assumptions

Similar to above except that Company is involved in the supply of digitized intangible products (e.g. online publisher).

7.2.2 Such a Company may have little physical assets and personnel in the first place. Nonetheless, the Company completes the obligation of its EC activities largely through its operations outside Singapore. There are little activities in Singapore apart from the website being hosted on facilities in Singapore. The business activities, that may include sourcing for content, promotion and advertising efforts, and maintaining the currency of information for the website, are performed outside Singapore.

7.2.3 The income arising from the EC transactions through the website in Singapore would not be considered as sourced in Singapore, and would not be subject to tax in Singapore as business income.

7.2.4 Although the Company is not considered as trading in Singapore and its income is not subject to tax as business income in Singapore, withholding tax may still arise on the payments received by the Company. If the payments are made by a resident or permanent establishment in Singapore for the use of or right to use of the digitized products, withholding tax will arise. The customer in Singapore has to withhold the tax and pay to the Comptroller, out of the payments to be made to the Company.



8 Company with its business operations outside Singapore, sets up a website and branch in Singapore

8.1 Tangible goods

8.1.1 Assumptions

- a) Company is involved in manufacturing of tangible products in a foreign country.
- b) Company operates a branch in Singapore
- c) Company hosts its website with a hosting service provider in Singapore.
- d) The services provided through the website are to enable customers to find out about the company's products and services, order the products, and make payments for purchases online. Delivery of products is made through normal physical delivery channels.
- e) The customers may or may not be from Singapore
- f) The activities undertaken by the branch can be varied, from supporting the technical aspects of the website to handling and completing EC transactions.

8.1.2 The Company will not be liable to tax in Singapore as its business operations are carried out outside Singapore.

8.1.3 Are the profits of the branch taxable in Singapore?

As the branch's operations are undertaken in Singapore, the profits so derived would be considered sourced in Singapore. Therefore, the profits are taxable in Singapore.

8.1.4 Would profits arising from EC transactions through the website be considered as profits of the branch?

Again, this depends on the type and degree of the activities undertaken by the branch. If the branch undertakes to market and sell the company's products electronically as well as complete the obligations arising from the EC transactions, it would be considered as carrying on a business in EC. The business profits arising from the EC transactions through the website in that branch would be considered as profits of the branch and thus, taxable income of the branch in Singapore.



8.2 Intangible goods

8.2.1 Assumptions

Similar to above except that Company is involved in the supply of digitized intangible products (E.g. online publisher).

8.2.2 Such a Company may have little physical assets and personnel in the first place. Nonetheless, if the branch in Singapore undertakes substantial activities to enable the completion of the EC transactions it would be considered as carrying on a business in EC in Singapore. The branch activities may include marketing, servicing, delivering of the Company's products electronically and completing the obligations arising from the EC transactions. Hence, the profits of the branch arising from such EC transactions through the website would be considered as profits of the branch and thus, taxable income of the branch in Singapore.

8.3 In the case where there is a double taxation agreement between Singapore and the foreign country in which the Company belongs, the terms under the double taxation agreement will have to be examined to establish whether the branch constitutes a permanent establishment (PE) in Singapore. If a PE exists, the income of the branch will be considered as sourced in Singapore.

9 EC Intermediary

9.1 What type of income is chargeable to tax for an EC intermediary?

9.1.1 Assumptions

- a) Company provides intermediary services and products such as hosting services, technical services to set up EC facilities, internet connectivity services or are market makers such as exchange platforms that bring together buyers and sellers. Basically the intermediary is anyone that facilitates different groups of buyers and sellers to be engaged in EC.
- b) Company's income may be from commission, service fee, subscription fee, registration fee or advertising fee etc. from businesses that use its services, products and facilities.
- c) Company has mainly personnel, know-how and physical assets like computers and software.

9.1.2 The EC intermediary will be liable to income tax in Singapore if its business operations are carried out in Singapore. As in the above models, this is largely a question of fact and degree.

9.1.3 If the EC intermediary has a substantial presence in Singapore such as the



presence of personnel and technical know-how, and it derives its income from the services provided through the personnel and know-how in Singapore, then such income as commission and fees would be considered income derived in Singapore. They are therefore subject to tax in Singapore.

10 Double Taxation Issues

10.1 Would double taxation arise in the above models?

10.1.1 Where the Company's business operations are in Singapore but the website is hosted in a foreign country, double taxation may arise if the same income is also subject to tax in the host country of the website. This would depend on the tax regulations (with respect to source and income) of the foreign country. Whether double taxation can be mitigated will depend on the existence of a double taxation agreement between Singapore and the foreign country and the terms of the agreement.

10.1.2 In the case as described in paragraph 7, where the Company's business operations are not in Singapore but the website is located in Singapore, there should not be double taxation on the income arising from the EC transactions through the website as the income is not subject to tax in Singapore.

10.1.3 In the case as described in paragraph 8, where the Company sets up a branch in Singapore, and the branch is considered as carrying on a business in Singapore, the profits of the branch will be liable to tax in Singapore. If such profits are similarly liable to tax in the home country of the Company, then double taxation may arise. Again, whether double taxation can be mitigated will depend on the existence of a double taxation agreement between Singapore and the foreign country and the terms of the agreement.

10.1.4 In the absence of a double taxation agreement between Singapore and the foreign country, unilateral tax credit may be allowed for *foreign-sourced* income that is remitted back into Singapore. In the case of an overseas branch and where no double taxation agreement exists, if the Comptroller is satisfied that the branch constitutes a PE in the foreign country (depending on the activities undertaken by the overseas branch), unilateral tax credits may be granted to the branch profits that are remitted back into Singapore.

11 Withholding Tax

11.1 While the profits arising from the EC transactions may not be business income taxable in Singapore, as in paragraph in 7.2, payments for the use of and the rights to use property rights borne by a resident person or permanent



establishment in Singapore are deemed sourced in Singapore and subject to tax. A resident person making such payments to a non-resident has to withhold tax on the payments.

11.2 However, withholding of tax is not required for payments to non-residents for the following 4 categories of software :

- (i) **Shrink-wrap software** (for income accruing on or after 1 Jan 2001);
- (ii) - **Downloadable software for end user;**
 - **Site licence;** and
 - **Software bundled with computer hardware**
(for income accruing on or after 23 Feb 2001).

For more details, please refer to the guide on “Exemption of Software Payments from Withholding Tax” (1st Edition published on 23 February 2001).

12 Permanent Establishment

12.1 Does the mere presence of a server in Singapore amount to trading in Singapore such that the business income is liable to Singapore tax?

12.1.1 The mere presence of a physical server in Singapore will not amount to trading in Singapore. As illustrated above, the Comptroller would look through the server which merely acts as a communication tool, to the extent of business activities in Singapore to determine if a person is trading in Singapore such that his business income is liable to Singapore tax.

12.1.2 As a practical guide, a person will be treated as trading in Singapore if he has a “permanent establishment” as defined in section 2 of the Income Tax Act, in Singapore where a business is wholly or partly carried on. For this purpose, a server alone will not constitute a “permanent establishment”.

If you have any queries, please do not hesitate to email us at
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