

# **IRAS e-Tax Guide**

**Income Tax: Certainty of Non-taxation of  
Companies' Gains on Disposal of Equity  
Investments (Second edition)**



INLAND REVENUE  
AUTHORITY  
OF SINGAPORE

Published by  
Inland Revenue Authority of Singapore

Published on 15 July 2016

First edition on 30 May 2012

Disclaimers: IRAS shall not be responsible or held accountable in any way for any damage, loss or expense whatsoever, arising directly or indirectly from any inaccuracy or incompleteness in the Contents of this e-Tax Guide, or errors or omissions in the transmission of the Contents. IRAS shall not be responsible or held accountable in any way for any decision made or action taken by you or any third party in reliance upon the Contents in this e-Tax Guide. This information aims to provide a better general understanding of taxpayers' tax obligations and is not intended to comprehensively address all possible tax issues that may arise. While every effort has been made to ensure that this information is consistent with existing law and practice, should there be any changes, IRAS reserves the right to vary our position accordingly.

© Inland Revenue Authority of Singapore

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording without the written permission of the copyright holder, application for which should be addressed to the publisher. Such written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature.

## Table of Contents

	Page
1 Aim.....	1
2 Background .....	1
3 Current tax treatment.....	1
4 Certainty of non-taxation scheme and effective date .....	2
5 Situations where normal tax rules continue to apply in determining nature of gains or losses from disposal of equity investments .....	3
6 Administrative procedures.....	4
7 Frequently asked questions (FAQs) .....	4
8 Contact information .....	6
Annex 1 – Example on application of condition to be met by a divesting company .....	7
Annex 2 – Flowchart illustrating the application of the certainty of non- taxation scheme to a divesting company .....	8

# **Certainty of Non-taxation of Companies' Gains on Disposal of Equity Investments**

## **1 Aim**

- 1.1 This e-Tax Guide provides details on the Budget 2012 tax measure to give upfront certainty of non-taxation to companies which derive gains from disposal of equity investments.
- 1.2 It is relevant to a company that disposes of investments in ordinary shares of another company on or after 1 June 2012.

## **2 Background**

- 2.1 In Budget 2012, Deputy Prime Minister and Minister for Finance announced that certainty of non-taxation will be given on gains derived by a company from disposal of equity investments that meet the specified condition.
- 2.2 The certainty of non-taxation scheme ("the scheme") is intended to facilitate companies' restructuring for growth and consolidation<sup>1</sup>, enhance Singapore's attractiveness as a business location and minimise compliance costs for taxpayers.

## **3 Current tax treatment**

- 3.1 Singapore does not tax capital gains. Therefore, only gains or losses of an income nature derived by a company from disposal of equity investments in another company are taxable or deductible for tax purposes.
- 3.2 The determination of whether a gain or loss from disposal of equity investments in a company is income or capital in nature is based on a consideration of the facts and circumstances of each case. The factors considered are drawn from established case law principles<sup>2</sup>. They include motive of seller, length of period of ownership of the shares disposed, frequency of similar transactions, reasons for the disposal and means of financing the acquisition of the shares.

---

<sup>1</sup> The restructuring of companies often involve the acquisition and disposal of equity investments in their associates and subsidiaries.

<sup>2</sup> The factors considered are commonly referred to as the badges of trade.

## 4 Certainty of non-taxation scheme and effective date

### 4.1 Condition for the scheme

4.1.1 In line with the policy objectives stated in paragraph 2.2, the scheme that is provided in Section 13Z of the Income Tax Act is only applicable to a divesting company that owns a sizeable level of ordinary share capital<sup>3</sup> of an investee company for a reasonable length of time. It is not applicable to a disposal of shares of a preferential nature or shares with redeemable or convertible features.

4.1.2 Under the scheme, gains<sup>4</sup> derived by a divesting company from its disposal of ordinary shares in an investee company are not taxable if immediately prior to the date of share disposal –

the divesting company had held at least 20%<sup>5</sup> of the ordinary shares in the investee company for a continuous period of at least 24 months<sup>6</sup>

4.1.3 The example in **Annex 1** illustrates the application of the condition.

### 4.2 Scope of the scheme

4.2.1 The scheme is applicable whether the investee company is –

- (i) incorporated in Singapore or elsewhere;
- (ii) listed<sup>7</sup> or non-listed.

---

<sup>3</sup> Ordinary shares typically carry voting rights and entitle their holders to variable rates of dividends unlike preference shares.

<sup>4</sup> On the other hand, the determination of income or capital nature of any losses incurred by a divesting company from disposal of ordinary shares under similar circumstances (i.e. as set out in paragraph 4.1.2) will continue to be made based on consideration of the facts and circumstances surrounding the disposal of shares. Please refer to paragraph 5.1(i) for more details.

<sup>5</sup> A shareholding of at least 20% is considered a reasonably sizeable ownership and may be a proxy indicator that the investment is not a portfolio investment. In addition, a similar 20% threshold is also used as an indication of significant influence for “associate companies” under the Singapore Financial Reporting Standards and associate companies are usually acquired for long-term strategic purposes.

<sup>6</sup> Under the scheme, this means that for every day of the 24 months, the divesting company must maintain a minimum ordinary shareholding level of at least 20% in the investee company whose ordinary shares are being disposed of.

<sup>7</sup> Listed on the Singapore Exchange (SGX) or an exchange elsewhere

4.2.2 The scheme does not apply to-

(a) ***Divesting company***

A ***divesting company*** whose gains or profits from the disposal of shares are included as part of its income based on the provisions of section 26 of the ITA.

(b) ***Investee company***

Disposals of shares in an unlisted ***investee company*** that is in the business of trading or holding Singapore immoveable properties (other than the business of property development).

4.2.3 The flowchart in **Annex 2** illustrates the application of the scheme to a divesting company.

### **4.3 Effective date**

4.3.1 The scheme is applicable to disposals of ordinary shares in an investee company made during the period 1 June 2012 to 31 May 2022 (both dates inclusive)<sup>8</sup>.

## **5 Situations where normal tax rules continue to apply in determining nature of gains or losses from disposal of equity investments**

5.1 The tax treatment of gains or losses from disposal of equity investments will continue to be determined based on normal tax rules<sup>9</sup> in the following situations –

(i) where a divesting company had held at least 20% of the ordinary shares in an investee company for a continuous period of at least 24 months (i.e. it meets the condition mentioned in paragraph 4.1.2) and incurs losses from the disposal of ordinary shares in the investee company. In such a case, the losses are not immediately disregarded;

(ii) where a divesting company derives gains from the disposal of ordinary shares in an investee company and the disposal does not meet the condition in paragraph 4.1.2. In such an instance, the gain is not automatically subject to tax;

---

<sup>8</sup> It was announced in Budget 2016 that the scheme which was originally effective for the period 1 June 2012 to 31 May 2017 was to be extended till 31 May 2022 .

<sup>9</sup>For a divesting company that has been awarded any tax incentive that covers gains or losses from disposal of investments, the relevant governing rules under the tax incentive will apply where applicable.

(iii) where a divesting company makes gains or losses from the disposal of non-ordinary shares in an investee company.

- 5.2 In other words, whether the gains or losses from the disposal of equity investments in the above situations are income or capital in nature will continue to be determined based on the facts and circumstances of each case.

## **6 Administrative procedures**

- 6.1 To avail itself of the scheme, a company must provide the requisite information in its income tax return for the Year of Assessment (“YA”) relating to the basis period in which the disposal of ordinary shares is made. The company must keep sufficient documents to support that the specified condition in paragraph 4.1.2 is met. The company need not submit the documents with its income tax return but must do so upon IRAS’ request.
- 6.2 Where a company does not provide the requisite information in its income tax return, IRAS will continue to apply normal tax rules to establish the nature of gains or profits from the disposal of ordinary shares.

## **7 Frequently asked questions (FAQs)**

### **7.1 Do companies have the choice to avail themselves or not to avail themselves of the scheme?**

Yes, companies have the choice. Companies that wish to avail themselves of the scheme can do so by providing the requisite information in their income tax returns for the relevant YA relating to the basis period in which the disposal of ordinary shares is made.

### **7.2 Can my company avail itself of the scheme if it currently enjoys a tax incentive which provides for tax exemption or concessionary rate on gains or losses from the disposal of equity investments?**

A company enjoying tax incentives is not precluded from availing itself of the scheme in respect of gains it derives from the disposal of ordinary shares if the condition in paragraph 4.1.2 is met. However, the relevant governing rules under the tax incentive awarded to your company continue to apply, where applicable, to:-

- (i) losses from disposals of equity investments; and
- (ii) gains from disposals of equity investments that do not meet the condition under the scheme.

**7.3 Is the scheme applicable to a registered business trust that disposes of ordinary shares in an investee company?**

Yes. This is because a registered business trust is taxed like a company for income tax purposes.

**7.4 Does the scheme apply only to tax resident companies?**

No. The scheme applies to all divesting companies regardless of tax residency (provided it is not one that falls within paragraph 4.2.2(a) of this e-Tax guide).

**7.5 How does the scheme apply in a situation where ordinary shares are disposed of after they have been converted from hybrid instruments e.g. convertible bonds? Does the 24-month period include the period of holding of convertible bonds up to their conversion into ordinary shares?**

In determining whether the condition in paragraph 4.1.2 is met, the holding period of ordinary shares starts on the date on which the bonds are converted into ordinary shares (i.e. the conversion date). The period of holding of convertible bonds up to their conversion into ordinary shares should not be taken into account in determining whether the 24-month period is met.

**7.6 How does the scheme apply to an amalgamated company that has elected to come under the corporate amalgamation framework under section 34C of the ITA?**

Under the section 34C corporate amalgamation tax framework, the amalgamated company is treated to have stepped into the shoes of the amalgamating companies. As such, ordinary shares that were originally acquired by an amalgamating company are treated as held by an amalgamated company since the date of acquisition by the amalgamating company.

**7.7 My company made two disposals of ordinary shares in the same investee company in the same financial year. The first disposal results in a gain of \$500,000 and the second disposal results in a loss of \$200,000. The net gain in the financial statements is \$300,000. How do I apply the scheme to the disposals if my company satisfies the condition in paragraph 4.1.2?**

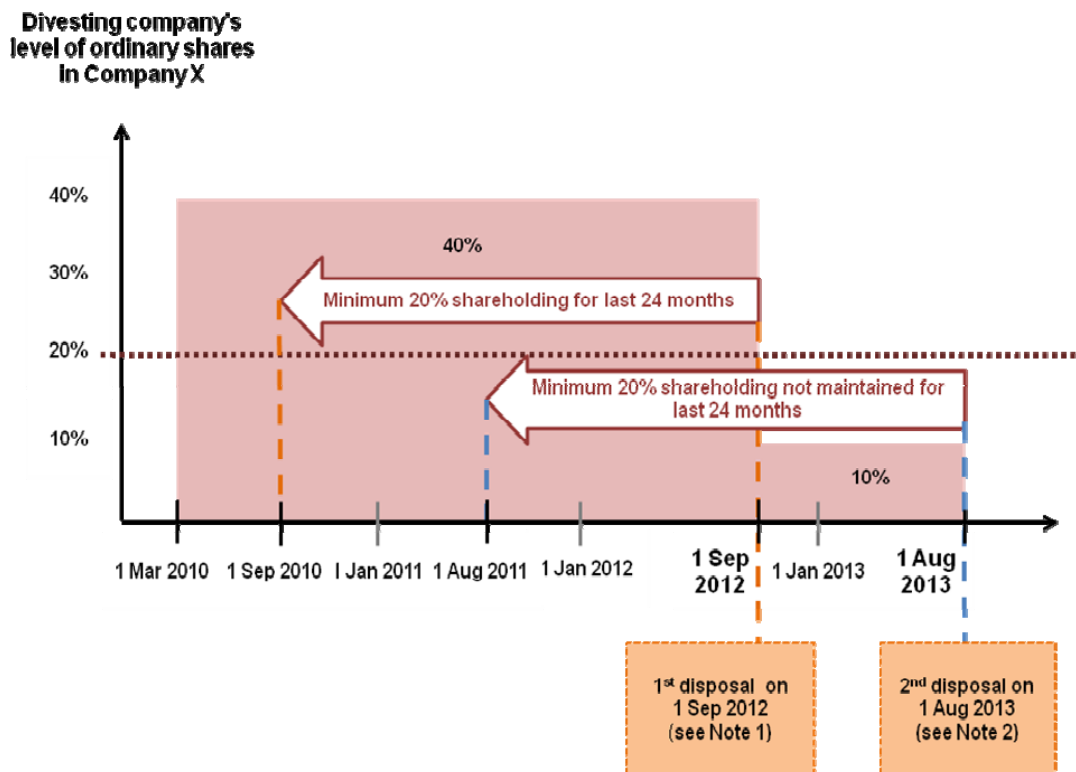
The gain of \$500,000 made on the first disposal of ordinary shares is treated as not taxable as the condition in paragraph 4.1.2 is met. Normal tax rules will however continue to apply to determine the tax treatment of the loss made on the second disposal of ordinary shares.



## **8 Contact information**

- 8.1 For any general enquiries or clarification on this e-Tax Guide, please call 1800 356 8622 (Corporate Income Tax).

## Annex 1 – Example on application of condition to be met by a divesting company



A company acquired 40% of the ordinary shares in Company X on 1 March 2010. On 1 September 2012, it disposes of 30% of the ordinary shares in Company X and on 1 August 2013 it disposes of the remaining 10% of ordinary shares in Company X. Gains are derived by the divesting company from both disposals.

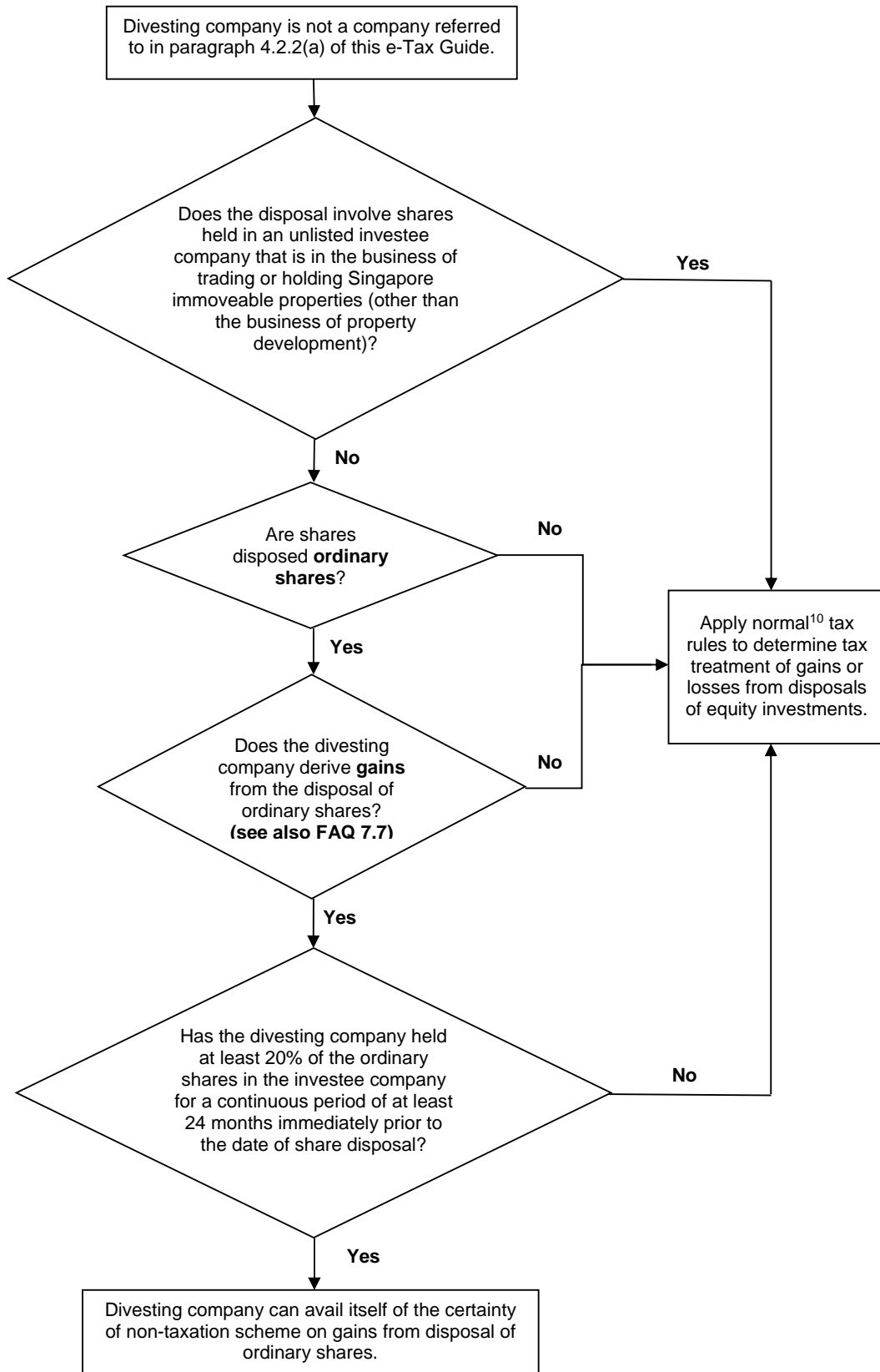
### **Note 1**

The gains from the 1<sup>st</sup> disposal on 1 September 2012 of 30% of the ordinary shares of Company X qualifies for certainty of non-taxation as immediately before the date of disposal, the divesting company has a minimum level of 20% of ordinary shares in Company X for a continuous period of at least 24 months. In this case, the divesting company has held a minimum level of 20% ordinary shares in Company X from 1 March 2010 to 31 August 2012 (i.e. 30 months).

### **Note 2**

The gains from the 2<sup>nd</sup> disposal on 1 August 2013 of 10% of the ordinary shares of Company X does not qualify for certainty of non-taxation. This is because in the 24 months immediately before the date of disposal (i.e. period from 1 August 2011 to 31 July 2013), the divesting company held less than 20% of ordinary shares in Company X. The taxability of the gain from the 2<sup>nd</sup> disposal will be determined based on facts and circumstances of the case.

**Annex 2 – Flowchart illustrating the application of the certainty of non-taxation scheme to a divesting company**



<sup>10</sup> If the divesting company has been awarded any tax incentive that covers gains or losses from disposal of investments, the relevant governing rules under the tax incentive will apply where applicable.