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IRAS e-Tax Guide

Ascertainment of Income from the Business of
the Making of Investments
(Fourth Edition)



Ascertainment of Income from the Business of the Making of Investments

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1 Aim

- 1.1 This e-Tax Guide provides details on how income from the business of the making of investments is determined based on the provisions of section 10D¹ of the Income Tax Act 1947 (“ITA”) and explains the Comptroller of Income Tax (“CIT”)’s tax treatment in certain scenarios.
- 1.2 The e-Tax Guide is applicable to a company, the trustee of a property trust, a Limited Liability Partnership (“LLP”) or Limited Partnership (“LP”), which derives income from any business of the making of investments.

2 At a Glance

- 2.1 A business of the making of investments is different from a business of dealing in investments or passive holding of investments. Based on the facts and business activities of the case, a company, trustee of a property trust, partner of an LLP or LP may be regarded as carrying on a business of the making of investments. In which case, its income would be taxable under section 10(1)(a) of the ITA but the provisions of section 10D of the ITA would apply to determine the income chargeable to tax.
- 2.2 Investments include securities, immovable properties and immovable property-related assets. A business of the making of investments includes a business of letting immovable properties such as service apartments.
- 2.3 Under section 10D of the ITA, the deduction of any outgoings or expenses and capital allowances are limited to the income derived from investments which produce income in that Year of Assessment (“YA”). Other than industrial building allowance (“IBA”) and land intensification allowance (“LIA”), the balance of any outgoings or expenses and capital allowances in excess of the income in that YA shall be disregarded.

3 Glossary

3.1 Business of dealing in investments/investment dealing

The business of buying and selling investments to derive trade income.

3.2 Entity

An entity refers to:

- a. a company incorporated or registered under any law in force in

¹ The previous section 10E has been renumbered to section 10D in the Income Tax Act 1947.

Singapore or elsewhere;

b. a partner of an LLP or LP incorporated, registered or formed under any law in force in Singapore or elsewhere; or

c. the trustee of a property trust fund.

3.3 Passive holding of investments / investment holding

The owning of investments for long term investment to derive passive investment income.

3.4 Section 10D entity

A section 10D entity refers to an entity that derives income from carrying on a business of the making of investments and is subject to the provisions of section 10D of the ITA in determining the income chargeable to tax under section 10(1)(a) of the ITA.

4 Background

4.1 An entity carrying on the business of investment dealing is taxed on gains from the purchase and sale of investments under section 10(1)(a) of the ITA. Generally, expenses incurred in the production of trade income are deductible and capital allowances are allowed on the assets employed in the business. Any unutilised trade losses are allowed to be carried forward for set-off against future income, provided that the shareholding test is met. Unutilised capital allowances can also be set-off against future income provided the company continues to carry on the trade or business in respect of the gains or profits of which the allowance falls to be made and the shareholding test is met.

4.2 The deduction of expenses against passive investment income is more restrictive than trade income. Any excess of deductible expenses over the passive investment income for any YA are not deductible against other income nor available for deduction against future income. In addition, no capital allowances are allowed against passive investment income.

4.3 The introduction of “the business of the making of investments” in section 10D of the ITA was in recognition that entities may hold investments not for sale but to derive income through the active management of the investments that they hold.

4.4 The rules in section 10D of the ITA are to ensure that a section 10D entity would not be able to enjoy the same tax treatment as an investment

dealing entity in respect of deductibility of expenses and capital allowances.

5 Application of Section 10D of the ITA

- 5.1 Whether an entity is carrying on the business of the making of investments is a question of fact. An entity claiming to be carrying on such a business must satisfy the CIT that business activities are carried on based on facts. The CIT will consider factors such as the overall context of the business, the capital employed, existence of systematic and organised activities, scale of activities, and manpower and other resources employed in the conduct of the business activities.
- 5.2 The business of an entity may be a composite business. To the extent that the income is determined to be derived from that part of the business that constitutes a business of the making of investments, the income from that part of the business is subject to the provisions of section 10D of the ITA from that YA onwards. The income so determined is chargeable to tax under section 10(1)(a) of the ITA.
- 5.3 Under section 10D of the ITA, the following rules shall apply when determining the income of an entity derived from its business of the making of investments:
- a. Any outgoings or expenses incurred in respect of investments which do not produce any income are not deductible;
 - b. Any outgoings or expenses incurred in respect of investments which produce income are only deductible against the income derived from such investments. The balance of any outgoings and expenses which cannot be set-off in that year shall be disregarded;
 - c. The capital allowances under sections 19, 19A, 20 and 21 of the ITA are only deductible against the income derived from investments which produce income. The balance of any allowances which cannot be set-off in that year shall be disregarded; and
 - d. The IBA or LIA under sections 16, 17, 18, 18B and 18C of the ITA are only deductible against the income derived from investments which produce income. However, any IBA or LIA which cannot be fully utilised by the entity in a YA is not disregarded. The unutilised balance can be used to set-off against other income (e.g. passive interest income) derived in the same YA. Subject to the relevant provisions of the ITA, any remaining unutilised balance can be carried forward to the subsequent YA, transferred under the loss transfer system of

group relief², or carried back and deducted against income for the immediate preceding YA³.

- 5.4 Under section 10D of the ITA, only expenses and capital allowances of investments that are income-producing are deductible against the income derived from the investments. Hence, it is necessary to identify each of the section 10D entity's investments and determine whether such investment is income-producing. The determination of what constitutes an investment for the purpose of section 10D of the ITA is an objective one, based on the specific facts and circumstance of each case.

Further details on the tax treatment applicable to a section 10D entity that is carrying on the business of letting immovable properties are provided in Annex A.

6 Administrative Procedure

- 6.1 You are required to make an evaluation of whether your business is one that is in the business of the making of investments. If so, the provisions of section 10D of the ITA will apply and your tax computations should be prepared accordingly. If you are carrying on a composite business which includes a business of the making of investments, you are required to separately identify the income and expenses, and capital allowances relating to the business of the making of investments in your tax computations. You should maintain the relevant supporting documents to substantiate your claims in the event that the CIT requests for them.
- 6.2 The rental income received by a section 10D entity under an operating lease is subject to tax when the rental income accrues to the lessor under the lease arrangement. However, if you have adopted Financial Reporting Standard ("FRS") 116/ Singapore Financial Reporting Standard (International) ("SFRS(I)") 16 for accounting purposes, you may elect to be taxed on the rental income using the effective rent method under the FRS 116/ SFRS(I) 16 tax treatment⁴. This is subject to the condition that the application of the FRS 116 / SFRS(I) 16 tax treatment is applied consistently every year and for all your operating leases. The election, once made, is irrevocable. The election should be made at the time of submitting the tax return for the relevant YA. Where a section 10D entity has not made such an election, tax adjustments would have to be made in the tax computations to subject the rental income to tax based on the contractual rental.

² The details of the loss transfer system of group relief provided in section 37B of the ITA are set out in the IRAS e-Tax Guide on "Group Relief System".

³ The details of the carry-back relief system provided in section 37D of the ITA are set out in the IRAS e-Tax Guide on "Carry-Back Relief System".

⁴ The details of the FRS 116/ SFRS(I) 16 tax treatment are set out in the IRAS e-Tax Guide on "Tax Treatment Arising from Adoption of Financial Reporting Standard 116 or Singapore Financial Reporting Standard (International) 16 - Leases".

7 Contact Information

7.1 If you have any enquiries or need clarification on this Guide, please call 1800-3568622.

8 Updates and Amendments

	Date of amendment	Amendments made
1	6 Sep 2011	IRAS had issued two administrative concessions to alleviate the transitional difficulties for YAs 1996 and 1997 from a strict application of the section 10E (renumbered section 10D). This e-tax guide does not cover them as they are no longer relevant.
2	11 Apr 2012	Paragraph 4.4(d) is revised to make it clear that excess IBA can be offset against other income. It is also eligible for group relief (from YA 2007).
3	25 Jan 2021	E-Tax guide has been updated to provide clarity on the tax treatment of section 10E (renumbered section 10D) entities. Annex A is added to provide further details on the tax treatment applicable to a section 10E (renumbered section 10D) entity in the business of letting immovable properties.
4	05 Apr 2022	E-Tax guide and Annex A have been amended to update the renumbered provisions in the Income Tax Act 1947 (section 10E renumbered section 10D).

Annex A - Further details applicable to a section 10D entity in the business of letting immovable properties

1. Scope of section 10D

- 1.1 Prior to YA 2005, section 10D of the ITA would apply to a section 10D entity, regardless of whether it is the owner of the immovable property. From YA 2005, an administrative concession was granted to exclude non-owners of immovable properties that carry on the business of letting immovable properties from the provisions of section 10D. Non-owners of immovable properties include lessees of properties, main tenants of food courts that sublet stalls to operators etc. This administrative concession does not apply if the arrangements by such non-owners with the owners of the immovable properties are not on arm's length basis or are entered into to obtain a tax advantage that is not intended by this concession.
- 1.2 To provide clarity on the tax treatment, the above administrative concession was enacted in section 10D(1B) of the ITA with effect from 7 December 2020. Where the investment made by the section 10D entity is an immovable property, section 10D of the ITA applies only if the section 10D entity is the legal owner of the investment, or otherwise has a proprietary interest in the investment and would receive consideration if the proprietary interest in the investment is disposed of or transferred, for example, by way of an assignment or a novation. With the enactment in the ITA, the administrative concession mentioned in paragraph 1.1 is no longer available.
- 1.3 As an illustration, a master lessee of a food court leases the food court from its landlord who is the legal owner of the property. The master lessee in turn sublets the food stalls in the food court to various tenants and derives rental income. The master lessee would not be subject to section 10D of the ITA since it is not the legal owner of the property. This is provided that the lease for the food court (i.e. a proprietary interest in the property) cannot be disposed of or transferred for a consideration by the master lessee.
- 1.4 The exclusion from the scope of section 10D of the ITA in paragraph 1.2 above would not apply if the arrangement between the relevant parties is entered into to obtain a tax advantage or the arrangement does not fall within the spirit and intent of the exclusion. The CIT is not precluded from reviewing the facts and circumstances surrounding each arrangement before according any exclusion from the scope of section 10D of the ITA.

2. Commencement of business

- 2.1 The date of commencement of a business depends on the facts of each case. The earliest date that the business of letting immovable properties may be regarded as commenced is only when the Temporary Occupation Permit ("TOP") of the property is obtained and rental income has

commenced. This is because the income-earning structure of the section 10D entity is established on the date when TOP is issued where the use and/ or occupation of the property is permitted and the section 10D entity is in a position to derive rental or other related income.

- 2.2 Pre-commencement expenses incurred by a section 10D entity are regarded as expenses incurred to put in place the income-earning structure of the business. Section 14R of the ITA that allows deduction for expenses incurred before a person derives its first dollar of income from a trade, business, profession or vocation is not applicable to section 10D entities.

3. Investments which produce income

- 3.1 An immovable property is regarded as income-producing if it is available for letting and it produced income. Where an immovable property is not available for letting (e.g. awaiting redevelopment, demolished or under redevelopment) and not producing income in the basis period or any part of the basis period, it would be regarded as non-income producing in that basis period or part of that basis period, as the case may be. This is regardless of whether income had been produced by the investment property in previous years or period.

4. Income subjected to the provisions of section 10D of the ITA

- 4.1 The business of the making of investments includes the business of letting immovable properties. Income from the business of letting immovable properties is not confined to rental income but may also include other income such as charges for the use of car park spaces, and income from the provision of services.
- 4.2 Whether an entity is in the business of providing services which involve the use of immovable property or the services provided are merely ancillary to the conduct of a business of letting immovable property is a question of fact. The income from the business of providing services is taxable under section 10(1)(a) and section 10D is not applicable. Where the services provided to the tenants are ancillary to the letting of the immovable property, i.e. the activities undertaken are in connection with the letting of the immovable property, the services provided would form part of the business of the making of investments.

5. Rental incentives

- 5.1 Renovation subsidy provided by a section 10D entity to its tenants is deductible if the ownership of the renovation is passed to the tenants (i.e. lease agreement requires tenants to remove the relevant fixture and fittings or to reinstate the premises to the original condition at the end of the lease).

However, if the landlord has ownership to the fixtures left behind by the tenants, such renovation subsidy would constitute a benefit of an enduring nature to the landlord's trade and is not deductible.