

# **IRAS e-Tax Guide**

## **INCOME TAX GUIDE ON E-COMMERCE**



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# Income Tax Guide on E-Commerce

## 1 AIM

- 1.1 This guide<sup>1</sup> provides guidance on when business income from Electronic Commerce (“EC”) transactions is considered as sourced in Singapore and therefore taxable in Singapore.
- 1.2 This guide is relevant to businesses that have EC transactions.

## 2 AT A GLANCE

- 2.1 Generally, business income is sourced in Singapore if the business operations giving rise to the income are carried out in Singapore. Such Singapore-sourced income is taxable in Singapore.
- 2.2 In the case of EC, if the business operations underpinning the EC transactions are carried out in Singapore, the income so derived is considered as sourced in Singapore and taxable here. Conversely, if the business operations are carried on outside Singapore, the income is considered as foreign-sourced and thus, taxable when remitted back to Singapore.<sup>2</sup>
- 2.3 To provide guidance on when income from EC would be considered sourced in Singapore and therefore subject to tax here, some business models with EC transactions are examined in this guide.

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<sup>1</sup> This guide replaces the e-Tax Guide on “Income Tax Guide on e-Commerce” published on 23 Feb 2001. The updates and amendments are as stated in paragraph 9 in page 10.

<sup>2</sup> From 1 June 2003, foreign-sourced income received in Singapore by resident persons may be exempted from tax under Section 13(8) of the Income Tax Act. Please refer to the e-Tax Guide on “Tax Exemption for Foreign-Source Income (Second Edition)” published on 31 May 2013.

### **3 GLOSSARY**

#### **3.1 Digitised goods**

Digitised goods are products that are transferred through electronic transmission in the form of texts, images or sound. Examples of digitised goods include online or downloadable songs, music videos, films, books, games, ring tones and logos.

#### **3.2 Server**

It is 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 Website**

Website is used broadly to encompass the infrastructure that enables EC to take place.

## **4 BACKGROUND**

- 4.1 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.
- 4.2 In Singapore, tax is imposed on income accruing in or derived from Singapore; and income received in Singapore from outside Singapore.
- 4.3 Where business income is concerned, the broad principle of 'operations test' is used to determine whether the income is derived from Singapore so as to be liable to tax here. If the business operations giving rise to the income are carried out in Singapore, the income derived from the operations is sourced in Singapore and thus taxable in Singapore. Whether business operations are carried out in Singapore is largely a question of fact and degree.
- 4.4 In the case of EC, especially if the company is involved mainly in digitised goods, there may be a need to look into its business model, the extent of its operations and their locality in order to ascertain whether the income from EC is derived from Singapore.

## **5 EC BUSINESS MODELS AND THEIR TAX TREATMENT**

- 5.1 For the purpose of providing guidance, three common business models<sup>3</sup> 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 5.4)
  - b) a company whose business operations are in Singapore, derives its income from EC activities through a website and a branch outside Singapore, (paragraph 5.5 – 5.6)
  - c) a company whose business operations are outside Singapore, derives its income from EC activities through a website and a branch in Singapore (paragraph 5.7 – 5.8).
- 5.2 For the models mentioned under paragraph 5.5 – 5.8, they will be separately examined in the context of physical and digitised goods.
- 5.3 In the case of cross-border transactions, the tax treatment or position that may be adopted by other countries is not addressed in this guide. The foreign tax administrations may seek to treat the income differently, resulting in possible double taxation or withholding tax.

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<sup>3</sup> These business models are not intended to be exhaustive and certain assumptions are also made as there could be finer variations within each model.

## **5.4 Company with its business operations in Singapore, sets up a website in Singapore**

### 5.4.1 Assumptions

- a) Company is involved in manufacturing of physical and digitised goods 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 goods and services, order the goods and make payment for the purchases and receive delivery of digitised goods online.
- d) The delivery of physical goods is made through normal physical delivery channels.

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

5.4.3 Thus, income derived from business conducted through the website will be income sourced in Singapore and subject to tax in Singapore.

## **5.5 Company with its business operations in Singapore, sets up a website in a foreign country**

### **Physical goods**

### 5.5.1 Assumptions

- a) Company is involved in manufacturing of physical goods 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 goods and services, order the goods, and make payment for purchases online.
- e) The delivery of goods is made through normal physical delivery channels.

5.5.2 The Company completes the obligations of its EC activities largely through its operations in Singapore and the activities in Singapore may include:

- a) provision of necessary information for the website and maintaining its currency;
- b) answering queries on its goods and services;
- c) receiving payments for purchases;
- d) delivery of goods;
- e) provision of after-sale services.

5.5.3 Although the website is in a foreign country, the fulfillment of the business obligations is done largely through its operations in Singapore. As such, income derived from its EC business will be considered as income sourced in Singapore and is subject to tax in Singapore.

## **Digitised goods**

### 5.5.4 Assumptions

Similar to paragraph 5.5.1 above except that the Company is involved in the supply of digitised goods.

5.5.5 Unlike a company involved in the manufacturing of physical goods, the Company may have little physical operations, supporting assets and personnel in Singapore. Nonetheless, the Company completes the obligations of its EC activities largely through its operations in Singapore and the activities may include sourcing for contents, promotion and advertising efforts and maintaining the currency of information for the website. These activities would enable the website to perform the following:

- a) answering queries on its goods and services;
- b) receiving payments for purchases;
- c) delivery of goods;
- d) provision of after-sale services.

5.5.6 Although the website is located in a foreign country, the fulfillment of the business obligations is done through its operations in Singapore. The Company's income is derived from activities carried out largely in Singapore. As such, the income derived from its EC transactions via its website will be considered as income sourced in Singapore and is subject to tax in Singapore.

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

### **Physical and digitised goods**

#### 5.6.1 Assumptions

- a) Company is involved either in manufacturing of physical goods in Singapore or the supply of digitised goods.
- 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 goods and services, order the goods, and make payment for purchases online and receive delivery of digitised goods online.
- d) The delivery of physical goods is made through normal physical delivery channels.
- e) The activities undertaken by the branch can be varied, from supporting the technical aspects of the website to handling and completing EC transactions.

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



- 5.6.3 Since the branch carries out its activities largely outside Singapore, its income so derived would be considered as sourced in the foreign country and would not be subject to tax in Singapore.
- 5.6.4 As to whether the income derived from the EC transactions through the website is considered as income of the branch or the Singapore operations, it would depend on the type and degree of activities undertaken to support the EC transactions and who undertakes the activities.
- 5.6.5 As a general rule, the branch would be considered as carrying on a business in EC if it undertakes to market and sell the Company's goods electronically as well as complete the obligations arising from the EC transactions. The business income arising from EC transactions through the website in that branch is considered as income of the branch and thus taxable income of the branch. Such income would be subject to tax in Singapore when the income is remitted back to Singapore.<sup>4</sup>

## **5.7 Company with its business operations outside Singapore, sets up a website in Singapore**

### **Physical goods**

- 5.7.1 Assumptions
- a) Company is involved in manufacturing of physical goods in a 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 goods and services, order the goods, and make payment for purchases online.
  - e) The delivery of goods is made through normal physical delivery channels.
  - f) The customers may or may not be from Singapore.
- 5.7.2 The website merely facilitates the conduct of EC transactions 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.
- 5.7.3 Since most of the Company's operations are conducted outside Singapore, the Company would not be considered as having its business operations in Singapore. The income from the EC transactions through the website is derived therefore mainly from its operations outside Singapore. Thus, such income would not be considered as sourced in Singapore and taxable in Singapore.

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<sup>4</sup> Please note that from 1 June 2003, foreign sourced income received in Singapore by resident persons may be exempted from tax under Section 13(8) of the Income Tax Act. Please refer to the e-Tax Guide on "Tax Exemption for Foreign-Source Income (Second Edition)" published on 31 May 2013.

## **Digitised goods**

### 5.7.4 Assumptions

Similar to the paragraph 5.7.1 above except that the Company is involved in the supply of digitised goods.

5.7.5 With its business operations outside Singapore, the 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 are performed outside Singapore may include:

- a) sourcing for content;
- b) promotion and advertising efforts;
- c) maintaining the currency of information for the website.

5.7.6 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.

5.7.7 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 digitised goods, withholding tax may arise.<sup>5</sup> The customer in Singapore has to withhold the tax and pay to the Comptroller, out of the payments to be made to the Company, if withholding tax is applicable.

## **5.8 Company with its business operations outside Singapore, sets up a website and a branch in Singapore**

### **Physical goods**

#### 5.8.1 Assumptions

- a) Company is involved in manufacturing of physical goods 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 goods and services, order the goods, and make payments for purchases online.
- e) The delivery of goods is made through normal physical delivery channels.
- f) The customers may or may not be from Singapore.
- g) The activities undertaken by the branch can be varied, from supporting the technical aspects of the website to handling and completing EC transactions.

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<sup>5</sup> For more details, please refer to the e-Tax Guide on "Rights-Based Approach for Characterising Software Payments and Payments for the Use of the Rights to use Information and Digitised Goods" published on 8 Feb 2013".

- 5.8.2 The Company will not be liable to tax in Singapore as its business operations are carried out outside Singapore. However, as the branch's operations are undertaken in Singapore, the income so derived by the branch will be considered as sourced in Singapore and are taxable in Singapore.
- 5.8.3 As to whether the income arising from the EC transactions through the website is considered as income of the branch, it would depend on the type and degree of the activities undertaken by the branch.
- 5.8.4 If the branch undertakes to market and sell the company's goods electronically as well as complete the obligations arising from the EC transactions, the income arising from the EC transactions would be considered as income of the branch and thus, taxable in Singapore.

### **Digitised goods**

- 5.8.5 Assumptions  
Similar to the above (paragraph 5.8.1) except that the Company is involved in the supply of digitised goods.
- 5.8.6 The 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 in Singapore, it would be considered as carrying on a business in EC in Singapore. The activities performed by the branch may include:
- a) marketing;
  - b) servicing;
  - c) delivering of the Company's products electronically;
  - d) completing the obligations arising from the EC transactions.
- 5.8.7 Hence, the income of the branch arising from such EC transactions through the website would be considered as income of the branch and subject to tax in Singapore.
- 5.8.8 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.

## **6 EC INTERMEDIARY**

- 6.1 An EC intermediary may be one that provides intermediary services and products such as hosting services, technical services to set up EC facilities and internet connectivity services. It may also be one who is a market maker such as exchange platforms that bring together buyers and sellers. Basically, an intermediary is anyone that facilitates different groups of buyers and sellers to be engaged in EC.
- 6.2 An EC intermediary'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. Such an intermediary has mainly personnel, know-how and physical assets like computers and software.
- 6.3 The EC intermediary will be liable to income tax in Singapore on its income if its business operations are carried out in Singapore. As in the business models above, this is largely a question of fact and degree.
- 6.4 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. Such income is therefore taxable in Singapore.

## **7 FREQUENTLY ASKED QUESTIONS**

- 7.1 Does the mere presence of a server in Singapore amount to trading in Singapore such that the business income is liable to Singapore Tax?
- 7.1.1 The mere presence of a physical server in Singapore will not amount to trading in Singapore. The Comptroller would look through the server which merely acts as a communicator 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. 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.
- 7.2 Would double taxation arise in the business models illustrated in this guide?
- 7.2.1 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 host country. Whether double taxation can be mitigated will depend on the existence of double taxation agreement between Singapore and the host country and the terms of agreement.
- 7.2.2 Where the Company's business operations are not in Singapore but the website is located in Singapore (as per paragraph 5.7), there should not be double taxation on the income arising from the EC transactions through the website as the income is not taxable in Singapore.

7.2.3 Where the Company sets up a branch in Singapore, and the branch is considered as carrying on a business in Singapore (as per paragraph 5.8), the income of the branch will be taxable in Singapore. If such income is similarly taxable in the home country of the Company, then double taxation may arise. 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.

7.2.4 In the case of an overseas branch of a Singapore resident company, 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 credit may be allowed for foreign-sourced income that is remitted back to Singapore.<sup>6</sup>

## 8 CONTACT INFORMATION

8.1 If you have any general enquiries or clarification on this e-tax guide, you may call:

- a) 1800-3568622 (Corporate); or
- b) 1800-3568300 (Individual).

## 9 UPDATES AND AMENDMENTS

	<b>Date of amendment</b>	<b>Amendments made</b>
1	18 Aug 2015	<ul style="list-style-type: none"> <li>(i) Editorial changes were made to the e-Tax Guide to include the replacement of the terms “tangible goods” and “intangible goods” with “physical goods” and “digitised goods” respectively;</li> <li>(ii) In respect of withholding tax treatment on digitised goods, paragraph 5.7.7 had been amended to make reference to the e-Tax Guide on “Rights-Based Approach for Characterising Software Payments and Payments for the Use of the Rights to use information and Digitised Goods”.</li> </ul>

<sup>6</sup> From 1 June 2003, foreign sourced income received in Singapore by resident persons may be exempted from tax under Section 13(8) of the Income Tax Act. Please refer to the e-Tax Guide on “Tax Exemption for Foreign-Source Income (Second Edition)” published on 31 May 2013”.