Section 10L: foreign-sourced disposal gains since 2024

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Section 10L was inserted by the Income Tax (Amendment) Act 2023 with effect from 1 January 2024 as Singapore's response to the European Union's Code of Conduct Group, which had listed Singapore's non-taxation of foreign-sourced capital gains as a harmful feature. The section deems gains from the sale or disposal of foreign assets to be income chargeable under section 10(1)(g) when they are received in Singapore by a "relevant entity" that lacks adequate economic substance in Singapore. Gains on the disposal of foreign intellectual property rights are deemed income regardless of substance.[1]

Who is caught

The section applies only to entities that are members of a "relevant group". A group is relevant when at least one of its entities is incorporated, registered or established outside Singapore, or when at least one entity has a place of business outside Singapore. Membership of the group follows consolidation under accounting standards. An entity is a member if its assets, liabilities, income, expenses and cash flows are included in the consolidated financial statements of the ultimate parent. It

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remains a member if they are excluded only on grounds of size, materiality or because the entity is held for sale.[2] Standalone entities and purely domestic groups are outside the section. A Singapore Pte Ltd owned by a Swiss AG is in a relevant group. A Singapore Pte Ltd owned by a Singapore individual with no foreign affiliates is not.

Individuals are never caught, because section 10L applies to entities and because resident individuals enjoy section 13(7A) in any event. The section matters for the Singapore holding company of a Swiss-Singapore group, for the Singapore treasury company of a protocol whose foundation sits in Zug and for the Singapore special-purpose vehicle that holds foreign-incorporated subsidiaries or foreign real estate. It does not matter for a Singapore fund that holds a tax incentive under section 13O or 13U, because incentivised entities are excluded for disposals made as part of their incentivised business, nor for prescribed financial institutions.[3]

What is a foreign asset and when is a gain received

A foreign asset is any movable or immovable property situated outside Singapore at the time of disposal. The section contains situs rules for the main asset classes: immovable property where it is located, shares where the company is incorporated, and other movable property where the owner is resident unless specific rules apply.[4] Digital assets are not mentioned. Under the residual rule a token owned by a Singapore-resident entity is situated in Singapore and is therefore not a foreign asset, which would take gains on tokens outside section 10L altogether for a Singapore company. The reading is attractive and probably right. A token that represents a share in a foreign company (a tokenised share or a security token) nonetheless takes the situs of the share, just as a token that represents foreign real estate takes the situs of the land. The characterisation exercise of Part B, Chapter III therefore has a tax consequence under section 10L for tokenised real-world assets.

Gains are caught only when "received in Singapore", with the section 10(25) meaning. A Singapore holding company that sells its Swiss subsidiary and keeps the proceeds in a Zürich bank account has not yet received the gain. The moment the proceeds are remitted, used to pay a Singapore debt or applied to buy movable

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property brought into Singapore, the gain is received and, absent substance, taxed at 17 per cent. The timing control that this gives the taxpayer is real but limited, because Singapore banks and auditors will ask why funds are being kept offshore and because the economic substance test is the better route.

The economic substance test

An entity escapes section 10L if it has adequate economic substance in Singapore in the basis period in which the disposal occurs. The test is split. A pure equity-holding entity is one whose only function is to hold shares and whose income is dividends and disposal gains. It meets the test if it files its returns and accounts, has its operations managed and performed in Singapore (whether by its own employees or by an outsourced provider) and has adequate human resources and premises in Singapore. A registered office address alone is not premises. Singapore-resident non-nominee directors count as human resources.[5] Any other entity must have its operations managed and performed in Singapore and is assessed on the number and qualifications of its full-time employees, the amount of its business expenditure in Singapore and whether key business decisions are made in Singapore. No numerical thresholds are prescribed.

A Singapore holding company that also lends to related companies is not a pure equity-holding entity and falls under the stricter branch of the test, a point that catches many protocol treasury companies which hold tokens and also fund affiliates. The outsourced-provider route is useful for family holding structures: a corporate services firm that handles the company's administration in Singapore may supply the "operations" and the premises, provided the directors' decisions are made in Singapore and minuted there.

Example

A Zug foundation controls a Singapore Pte Ltd that holds the shares of a Cayman Islands operating company and a portfolio of tokens. In 2026 the Singapore company sells the Cayman shares for US$ 12 million and remits US$ 4 million to Singapore to pay staff. The Singapore company is in a relevant group (foreign

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parent). The Cayman shares are a foreign asset (incorporated outside Singapore). The gain is partially received in Singapore. Suppose the company has one resident director who is also a director of six other companies, uses the corporate secretary's address and has no employees. It then fails the substance test and the remitted portion of the gain is income taxed at 17 per cent. If the company has two employees in Singapore, leases an office and minutes its investment decisions there, it passes and no tax arises. The cost of the substance is a fraction of the tax.

Interaction with the fund incentives and advance rulings

Funds approved under sections 13D, 13O or 13U are excluded from section 10L for disposals made in the course of their incentivised business, which preserves the incentive. A fund that has lost its incentive status for a year, for example because its assets under management fell below the required minimum (see Chapter IV of this Part), loses the exclusion with it. A fund structure that has an unincentivised Singapore feeder or holding company in it should check that entity separately.

IRAS offers advance rulings on the application of section 10L. The first two years of practice have shown that the authority applies the substance test with the same pragmatism that it applies to the badges of trade. A ruling costs a fee and takes some weeks and is worth obtaining before a large disposal.[6]

Notes

1. Income Tax Act 1947, s. 10L (gains from sale or disposal of foreign assets), inserted by the Income Tax (Amendment) Act 2023 with effect from 1 January 2024. See also IRAS, e-Tax Guide *Tax Treatment of Gains or Losses from the Sale of Foreign Assets*, first published December 2023. ↩

2. Income Tax Act 1947, s. 10L(1) and (2) (definitions of "entity", "group" and "relevant group"); DLA Piper, *Section 10L: Singapore tax treatment of foreign-sourced capital gains*, client note of 14 December 2023, confirming the consolidation-based group test. ↩

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3. Income Tax Act 1947, s. 10L(10) and the related exclusions for prescribed financial institutions and entities whose income is exempt or concessionary under specified incentive provisions. ↩
4. Income Tax Act 1947, s. 10L(14)–(15) (situs rules for determining whether property is situated outside Singapore). ↩
5. Income Tax Act 1947, s. 10L(6)–(8) (economic substance requirement for pure equity-holding entities and other entities); IRAS, e-Tax Guide *Tax Treatment of Gains or Losses from the Sale of Foreign Assets*, section on the economic substance requirement. ↩
6. Income Tax Act 1947, s. 108 and the Seventh Schedule (advance rulings); IRAS, *Advance Ruling System for Income Tax*, fee and procedure. ↩

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