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No. S 8

INCOME TAX ACT
(CHAPTER 134)

INCOME TAX
(EXEMPTION OF INCOME OF
APPROVED COMPANIES ARISING FROM FUNDS
MANAGED BY FUND MANAGER IN SINGAPORE)
REGULATIONS 2010

ARRANGEMENT OF REGULATIONS

Regulation

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In exercise of the powers conferred by section 13R of the Income Tax Act, the Minister for Finance hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Income Tax (Exemption of Income of Approved Companies Arising from Funds Managed by Fund Manager in Singapore) Regulations 2010 and, subject to paragraph (2), shall be deemed to have come into operation on 1st September 2007.

(2) No liability to pay any penalty under section 13R of the Act shall arise in respect of any exemption from tax prior to 7th January 2010.

Definitions

2.—(1) In these Regulations —

“bona fide entity” means an entity that is not a non-bona fide entity;

“designated investments” and “specified income” have the same meanings as in the Income Tax (Exemption of Income of Non-residents Arising from Funds Managed by Fund Manager in Singapore) Regulations 2010 (G.N. No. S 6/2010), with references to “prescribed person” therein modified to refer to “approved company”;

“designated person” has the same meaning as in the Income Tax (Exemption of Income of Non-residents Arising from Funds Managed by Fund Manager in Singapore) Regulations 2010;

“prescribed percentage”, in relation to an approved company, means —

(a) where the approved company has less than 10 relevant owners, 30%; or

(b) where the approved company has at least 10 relevant owners, 50%;

“Singapore person”, in relation to an approved company, means a person who is a Singapore citizen, resident in Singapore or permanent establishment in Singapore, but does not include —

(a) a designated person;

[S 345/2012]

(b) another approved company under section 13R of the Act and which, at all times during the basis period for the year of assessment for which the income of the approved company is exempt from tax under section 13R of the Act —

(i) beneficially owns directly, 100% of the value of issued securities of the approved company; and

(ii) satisfies the conditions in regulation 3(2); or

[S 345/2012; S 345/2012]

(c) an approved person under section 13X of the Act and which, at all times during the basis period for the year of assessment for which the income of the approved company is exempt from tax under section 13R of the Act —

(i) beneficially owns directly 100% of the value of issued securities of the approved company; and

(ii) satisfies the conditions in regulation 3(2) of the Income Tax (Exemption of Income Arising from Funds Managed by Fund Manager in Singapore) Regulations 2010 (G.N. No. S 414/2010).

[S 345/2012; S 383/2016 wef 07/07/2010]

(2) For the purposes of section 13R of the Act and these Regulations, issued securities include —

(a) any right under a contract for differences, or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations, in —

(i) the value or price of issued debentures, stocks or shares;

(ii) the value or price of any group of any such debentures, stocks or shares; or

(iii) an index of any such debentures, stocks or shares; and

(b) derivatives of a buy-sell nature for funding purpose,

but does not include —

(A) futures contracts which are traded on a futures market;

(B) bills of exchange;

(C) promissory notes; or

(D) certificates of deposit issued by a bank or finance company.

(3) Any reference in section 13R of the Act and these Regulations to the value of issued securities of a company of the type described in paragraph (2) is a reference to the value of those securities —

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- (a) at the time of their issue by the company; or
 - (b) in the case of derivatives of a buy-sell nature, at the time of their buy-sell transaction.

Exemption from tax of income under section 13R of Act

3.—(1) Subject to the conditions in paragraph (2) and regulation 4, there shall be exempt from tax the specified income derived by an approved company from funds managed in Singapore by any fund manager in respect of designated investments.

(2) The conditions referred to in paragraph (1) are —

- (a) at all times during the basis period for the year of assessment in question, the aggregate value of the approved company's issued securities beneficially owned (directly or indirectly) by Singapore persons is less than 100%;

[S 383/2016 wef 01/09/2007]

- (b) the investment strategy remains unchanged from the date the company is approved as an approved company;
- (c) the income of the approved company is not derived from investments which have been transferred (other than by way of a sale on market terms and conditions) from a person carrying on a business in Singapore where the income derived by that person from those investments was not, or would not have been if not for their transfer, exempt from tax; and
- (d) such conditions as specified in the letter of approval issued by the Monetary Authority of Singapore on approving a company as an approved company under section 13R of the Act.

No deduction in respect of loss arising from designated investments

4. Notwithstanding anything in these Regulations, no deduction shall be allowed under the Act to —

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- (a) any approved company in respect of any loss arising from —
- (i) the sale of any designated investments if any gains or profits realised from the sale of such investments would have been exempt from tax under regulation 3; and
 - (ii) any transaction, other than those falling under sub-paragraph (i), in respect of any designated investments if any gains or profits from such transaction would have been exempt from tax under regulation 3; and
- [S 345/2012]*
- (b) any relevant owner of any approved company in respect of any loss arising from sales or transactions of the types described in paragraph (a) which are otherwise attributable to such relevant owner.

Persons exempted from application of certain provisions

5.—(1) Section 13R(3) of the Act shall not apply to a relevant owner who is —

- (a) an individual;
 - (b) a bona fide entity not resident in Singapore who does not have a permanent establishment in Singapore (other than a fund manager) and does not carry on a business in Singapore;
 - (c) a bona fide entity not resident in Singapore (excluding a permanent establishment in Singapore) who carries on an operation in Singapore through a permanent establishment in Singapore where the funds used by the entity to invest directly or indirectly in the approved company are not obtained from such operation;
- [S 345/2012]*
- (d) a designated person;
- [S 345/2012; S 345/2012]*
- (e) another approved company under section 13R of the Act which, at all times during the basis period for the year of

assessment for which the income of an approved company is exempt from tax under section 13R of the Act —

(i) beneficially owns directly, 100% of the value of issued securities of the approved company; and

(ii) satisfies the conditions in regulation 3(2); or

[S 345/2012; S 345/2012]

(f) an approved person under section 13X of the Act which, at all times during the basis period for the year of assessment for which the income of an approved company is exempt from tax under section 13R of the Act —

(i) *[Deleted by S 646/2013]*

(ii) satisfies the conditions in regulation 3(2) of the Income Tax (Exemption of Income Arising from Funds Managed by Fund Manager in Singapore) Regulations 2010 (G.N. No. S 414/2010).

[S 345/2012; S 383/2016 wef 07/07/2010]

(2) Section 13R(5) of the Act shall not apply to a person referred to in that section if the person is —

(a) an individual;

(b) a bona fide entity not resident in Singapore who does not have a permanent establishment in Singapore (other than a fund manager) and does not carry on a business in Singapore;

(c) a bona fide entity not resident in Singapore (excluding a permanent establishment in Singapore) who carries on an operation in Singapore through a permanent establishment in Singapore where the funds used by the entity to invest directly or indirectly in the approved company are not obtained from such operation;

[S 345/2012]

(d) a designated person;

[S 345/2012; S 345/2012]

(e) another approved company under section 13R of the Act which, at all times during the basis period for the year of

assessment for which the income of an approved company is exempt from tax under section 13R of the Act —

- (i) beneficially owns directly, 100% of the value of issued securities of the approved company; and
- (ii) satisfies the conditions in regulation 3(2); or

[S 345/2012; S 345/2012]

- (f) an approved person under section 13X of the Act which, at all times during the basis period for the year of assessment for which the income of an approved company is exempt from tax under section 13R of the Act —

- (i) *[Deleted by S 646/2013]*

- (ii) satisfies the conditions in regulation 3(2) of the Income Tax (Exemption of Income Arising from Funds Managed by Fund Manager in Singapore) Regulations 2010.

[S 345/2012; S 383/2016 wef 07/07/2010]

(3) For the purposes of section 13R(3) and (5) of the Act and the definition of “prescribed percentage” in regulation 2(1), where the issued securities or equity interest, as the case may be, is held by a trustee of a trust, the relevant owner or person shall be the beneficiary of the trust administered by the trustee.

(4) For the purposes of paragraph (3), if a person is a beneficiary of a trust (referred to in this paragraph as a first level trust entity) whose trustee holds (including by virtue of one or more applications of this paragraph), in its capacity as trustee of the first level trust entity, interests of another trust (referred to in this paragraph as a second level trust entity), then the person is taken to beneficially own interests of the second level trust entity; and the percentage which the value of those interests bears to the total value of all interests of the second level trust entity shall be computed in accordance with the following formula:

$$A \times B,$$

where A is the percentage which the value of the interest of the first level trust entity beneficially owned by the person

bears to the total value of all interests of the first level trust entity; and

B is the percentage which the value of the interest of the second level trust entity beneficially owned by the trustee of the first level trust entity bears to the total value of all interests of the second level trust entity.

Definition of associate

6.—(1) For the purposes of section 13R of the Act and subject to paragraph (2), a person (“P1”) is an associate of another person (“P2”), where P1 or P2 are neither designated persons nor individuals —

(a) where P1 is a company and —

(i) where P2 is another company —

(A) P1 beneficially owns, directly or indirectly, at least 25% of the total value of the issued securities of P2;

(B) P2 beneficially owns, directly or indirectly, at least 25% of the total value of the issued securities of P1; or

(C) a third person beneficially owns, directly or indirectly, at least 25% of the total value of the issued securities of P1 and at least 25% of the total value of the issued securities of P2;

(ii) where P2 is a company and a beneficiary of a trust —

(A) P1 beneficially owns, directly or indirectly, at least 25% of the total value of the issued securities of P2;

(B) P2 beneficially owns, directly or indirectly, at least 25% of the total value of the issued securities of P1; or

(C) a third person beneficially owns, directly or indirectly, at least 25% of the total value of the

issued securities of P1 and at least 25% of the total value of the issued securities of P2; and

- (b) where P1 is a company and is a beneficiary of a trust (“T1”) and where P2 is a company and is a beneficiary of another trust (“T2”) —
- (i) P1 beneficially owns, directly or indirectly, at least 25% of the total value of the issued securities of P2;
 - (ii) P2 beneficially owns, directly or indirectly, at least 25% of the total value of the issued securities of P1; or
 - (iii) a third person beneficially owns, directly or indirectly, at least 25% of the total value of the issued securities of P1 and at least 25% of the total value of the issued securities of P2.

(2) Notwithstanding anything in paragraph (1), P1 is not an associate of P2 in the following cases:

- (a) where —
- (i) either P1 or P2 is an entity listed on an exchange in Singapore or elsewhere;
 - (ii) P1 does not beneficially own, directly or indirectly, at least 25% of the total value of the issued securities of P2; and
 - (iii) P2 does not beneficially own, directly or indirectly, at least 25% of the total value of the issued securities of P1;

[S 646/2013]

- (b) where —
- (i) no third person (other than an individual or a designated person) beneficially owns, directly or indirectly, at least 25% of the total value of issued securities of P1 and at least 25% of the total value of issued securities of P2; and
 - (ii) at least 25% of the total value of the issued securities of P1 and at least 25% of the total value of the issued

securities of P2 are owned either directly by an individual or a designated person, or indirectly through a nominee company or a trust fund by an individual or a designated person; or

[S 646/2013]

(c) where P1 is an approved person under section 13X of the Act which, at all times during the basis period for the year of assessment for which the income of an approved company is exempt from tax under section 13R of the Act —

(i) beneficially owns directly any of the issued securities of the approved company; and

(ii) satisfies all the conditions in regulation 3(2) of the Income Tax (Exemption of Income Arising from Funds Managed by Fund Manager in Singapore) Regulations 2010 (G.N. No. S 414/2010).

[S 646/2013]

Annual statement and annual declaration

7.—(1) Where an approved company derives in any basis period any income exempt from tax under regulation 3, any fund manager of the approved company shall issue to every relevant owner of the approved company a statement for the basis period.

(2) The statement issued under paragraph (1) shall include —

(a) the gains or profits as reflected in the audited account of the approved company for the basis period;

(b) the total value of the issued securities of the approved company on the relevant day;

(c) the total value of the issued securities of the approved company held by the relevant owner on the relevant day; and

(d) whether the number of relevant owners of the approved company is less than 10 on the relevant day.

(3) The Minister or such person as he may appoint may, in any particular case, waive the requirement under paragraph (1), subject to such conditions as he may impose.

(4) Any fund manager of the approved company shall, within one month after the date of issue of the audited account of the approved company relating to any basis period in which the relevant day falls or such extended time as the Comptroller may allow —

(a) submit a declaration to the Comptroller, in such form as the Comptroller may specify, where the approved company has any relevant owner to whom section 13R(3) of the Act applies for the basis period; and

[S 345/2012]

(b) provide such details of the relevant owner as may be specified by the Comptroller.

(5) Where a relevant owner is liable to pay to the Comptroller a penalty under section 13R of the Act, he shall declare the amount of penalty liable to be paid in its return of income for the year of assessment relating to the basis period of the relevant owner in which the relevant day falls.

(6) An approved company shall submit an annual declaration to the Comptroller and the Monetary Authority of Singapore, in such form and within such time as the Comptroller or the Monetary Authority of Singapore may specify, that it has met, for each basis period, the conditions —

(a) subject to which the Minister or such person as he may appoint approved the company under section 13R(1) of the Act; and

(b) specified in regulation 3.

(7) Paragraphs (1) and (4) shall not apply where the relevant owner is another approved company under section 13R of the Act referred to in regulation 5(1)(e) or an approved person under section 13X of the Act referred to in regulation 5(1)(f), as the case may be.

[S 345/2012; S 345/2012]

Saving and transitional provision

8. Notwithstanding the repeal of section 13R of the Act in force immediately before 1st September 2007, where any approved company —

- (a) has a basis period ending on a date other than 31st August;
- (b) has derived before, on and after 1st September 2007 specified income from funds managed in Singapore by any fund manager in respect of designated investments specified in the Income Tax (Exemption of Income of Approved Companies from Funds Managed by Fund Manager) Regulations 2007 (G.N. No. S 628/2007);
- (c) has opted for tax exemption under the repealed section 13R of the Act and not the re-enacted section 13R to apply in respect of income of the kind referred to in paragraph (b) derived during the period from 1st September 2007 to the date immediately before the first basis period beginning on or after 1st September 2007 (referred to in this regulation as the specified period); and
- (d) has satisfied during the specified period all the conditions in the Income Tax (Exemption of Income of Approved Companies from Funds Managed by Fund Manager) Regulations 2007,

the Income Tax (Exemption of Income of Approved Companies from Funds Managed by Fund Manager) Regulations 2007 shall continue to apply and have effect to the income of the kind referred to in paragraph (b) derived during the specified period by the approved company.

Made this 4th day of January 2010.

PETER ONG
*Permanent Secretary,
Ministry of Finance,
Singapore.*

[R032.19.4.V32; AG/LEG/SL/134/2005/29 Vol. 1]